

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

January 27, 2000

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday, January 27, 2000, at 1:30 p.m. in the Planning Department Conference Room, 10th Floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Frank Garofalo, Chair; James Barfield; Bud Hentzen; Bill Johnson (late arrival); Richard Lopez; Ron Marnell; John W. McKay, Jr.; Jerry Michaelis; Susan Osborne-Howes; George Platt; Ray Warren; Harold Warner, Jr.; and Deanna Wheeler. Chris Carraher was not present. Staff members present were: Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner; Scott Knebel, Senior Planner; Lisa Verts, Senior Planner; Barry Carroll, Associate Planner, and Karen Wolf, Recording Secretary.

1. Approval of MAPC minutes for November 29, 1999.

GAROFALO "On Page 36, on the vacation case No. V-2190, I think the motion and the vote on it has been omitted."

KROUT "It does look like we are missing the motion on that."

MOTION: That the minutes be approved as amended.

GAROFALO moved, **PLATT** seconded the motion, and it carried unanimously (12-0).

FRANK GAROFALO, Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

Johnson arrived at the meeting at 1:37 p.m.

2. Subdivision Committee items 2/1, 2/2, 2/3 and 2/4 were approved, subject to Subdivision Committee recommendations.

MCKAY moved, **WARREN** seconded the motion.

GAROFALO "Is there anyone in the audience who wishes to speak on Items 2/1 through 2/4? Okay, we have a motion to approve."

VOTE ON THE MOTION:
favor. There was no opposition.

The motion carried with 13 votes in

- 2/1. S/D - 00-02 – One-Step Final Plat of CHEROKEE ACRES ADDITION, located, west of 231st St. West, on the north**

side of 47th St. South.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. A restrictive covenant is required for the twin lagoon system.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. An off-site Floodway Reserve Easement Agreement is required to continue the drainage towards 231st St. West.
- D. County Engineering needs to comment on the need for access controls. Access controls shall be referenced in the plat's text. Two access openings are permitted for the site.
- E. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- F. The dimension along the north line of the plat needs to correspond with the dimension denoted within the legal description.
- G. The County Surveyor has commented that the plat boundary does not close.
- G. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- H. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- I. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- J. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- K. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- L. Perimeter closure computations shall be submitted with the final plat tracing.
- M. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- N. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- O. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

2/2. S/D 00-03 – One-step final plat of STARWEST ADDITION, located on the northwest corner of 37th Street North and Ridge Road.

- A. The site is currently located outside of the Northwest Wichita Sanitary Sewer growth limits. The Applicant shall guarantee the extension of City water and sanitary sewer to serve the lots being platted. City/County Engineering needs to indicate the need for any other guarantees or easements. City Engineering has requested a utility easement along the south line of the plat for sanitary sewer. The Applicant shall provide a restrictive covenant prohibiting development until the site can be serviced by sanitary sewer.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.

- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. A guarantee is required.
- E. City Engineering needs to comment on the access controls. The plat proposes three access openings along both Ridge Road and 37th St. North in accordance with the approved CUP. The CUP approval also required that the joint openings between Lots 3 and 4 and between Lots 4 and 5 be limited to right turns only, or a guarantee provided for future construction of a raised median if deemed necessary by Traffic Engineering. The dedication of access controls shall be referenced in the plat's text.
- E. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- F. The final plat tracing shall state in the plat's text the purposes of Reserve A as well as who is to own and maintain the reserve.
- G. The plat's text shall include the standard floodway language.
- H. The joint access openings shall be established by separate instrument.
- I. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- J. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- K. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP (referenced as DP-250) and its special conditions for development on this property.
- L. The final tracing shall include a note that this plat is subject to the conditions of DP-250.
- M. Traffic Engineering should comment on the need for traffic improvements. The CUP required a continuous right-turn decel lane and a left-turn storage lane from the intersection to the major entrance on 37th Street North and the major entrance on Ridge Road. The CUP also required the Applicant to guarantee 12.5% of the cost of signalization of the intersection of 37th St. North and Ridge Road.
- N. Traffic Engineering should comment on the need for street improvements. The CUP required a guarantee for paving along the frontage of 37th Street North.
- O. In accordance with the CUP, a cross-lot circulation agreement shall be provided which provides at least two points of access from 37th Street North to the property north of the plat.
- P. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- Q. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- R. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- S. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- T. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- U. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and

Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.

- V. Perimeter closure computations shall be submitted with the final plat tracing.
- W. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- X. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Y. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

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- 2/3. D-1783** – Dedication of Street Right-of-way from W.R. Kenney, for property generally located on the southeast corner of 21st street North and Waco.

LEGAL DESCRIPTION: The north 10 feet of Lot 1, Block 1, Constance M. Kenney Addition.

PURPOSE OF DEDICATION: As a requirement of a Lot Split (L/S-1030), City Engineering requested additional street right-of-way.

Planning Staff recommends the granting of this dedication be accepted.

- 2/4. D-1784** – Dedication of a Utility Easement from W.R. Kenney, for property generally located on the southeast corner of 21st Street North and Waco.

LEGAL DESCRIPTION: The east 20 feet of the west 160.60 feet of Lot 1, Block 1, Constance M. Kenney Addition to Wichita, Sedgwick County, Kansas, except the north 226.82 feet thereof; and the south 10 feet of the north 226.82 feet of Lot 1, Block 1, Constance M. Kenney Addition to Wichita, Sedgwick County, Kansas.

PURPOSE OF DEDICATION: This Dedication is a requirement of a Lot Split (L/S-1030) and is being dedicated for construction and maintenance of public utilities.

Planning Staff recommends the granting of this dedication be accepted.

ZONING:

3. **Case No. CU-561** – Dillon Stores, Intrust Bank National Assn. ETAL Trustees (owner); PEC, c/o Rob Hartman (agent) request a Conditional Use on 5.6 acres to permit a seasonal nursery and garden center, described as:

Lots 1 & 2, Block 1, Westform Addition, Sedgwick County, Kansas. Generally located on the northeast corner of 13th Street North and West Street.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant proposes to add a seasonal nursery and garden center to the Dillons Store located at the northeast corner of 13th Street North and West Street. The property is currently zoned "LC" Limited Commercial. Nurseries and garden centers that do not meet the outdoor display and storage restrictions of the "LC" Limited Commercial district are permitted only as a "Conditional Use," in conformance with requirements in Section III-D.6.z of the Unified Zoning Code.

The nursery/garden center is proposed for location on the eastern side of the lot, situated between the Dillons Store and 13th Street. The remainder of the 5.6± acre tract is occupied by Dillons Super Store, parking, and a drive-up bank facility. The greenhouse is 21' X 27' in size, and is surrounded by a seasonal retail area for outdoor storage plants and landscape supplies. A fence encloses the outdoor display area. The overall size of the nursery/garden center is 3,216 square feet, less than 0.1 acres, and eliminates 10 parking spaces. After removal of 10 spaces, the amount of parking provided would still exceed required parking requirements, including requirements for the garden center.

The requirements of Section III-D.6.z of the UZC stipulate that garden centers should be located on arterial streets or expressways, be screened when adjacent to residential zoning districts, and have display/storage areas within an enclosed building or screening fence (if required) or be adjacent to the building. Additionally, the display/storage areas should not be within 25 feet of the right-of-way or be located within required parking spaces. Other restrictions include: having lights shielded away from adjoining properties, prohibiting string lights, prohibiting sound projecting devices or loudspeakers that could be heard beyond the property boundaries, and prohibiting the outdoor repair or servicing of vehicles and equipment. A site plan is required that shows the location of structures, ingress/egress, off-street parking, loading, on-site circulation, and designates

storage/display areas. One final aspect of this section is the provision that MAPC may establish other conditions it deems necessary for the protection of adjacent property, and including the maintenance of property. It can also require periodic reports of compliance to be prepared.

The proposed site plan addresses requirements for this "Conditional Use." There is no separate provision for loading/unloading at the garden center site, but would use the adjacent parking area.

The site is located on a portion of Lot 1 of Westform Addition, which also includes the Dillons Store and the drive-in bank facility on the western side of Dillons. Lot 2 of Westform Addition is a triangular parcel on the northeast of Lot 1 that is zoned "B" Multi-Family and is used for parking, pursuant to a use exception for off-street parking on property zoned "B" (BZA 33-94). A seasonal garden center has been located at this Dillons Store in the past, but not for the last few years.

Commercial uses are located on the four corners of the intersection, and to the east of the site. Sycamore Park is located to the northeast, and has a common boundary line for a short distance along Lot 2.

CASE HISTORY: Westform Addition was recorded June 5, 1957. As previously discussed, a use exception was granted for Lot 2 to be used for off-street parking on property zoned "B" Multi-Family on November 22, 1994.

ADJACENT ZONING AND LAND USE:

NORTH:	"LC" Limited Commercial;	KAKE
SOUTH:	"LC" Limited Commercial	Commercial uses
EAST:	"LC" Limited Commercial;	Wichita Municipal Federal Credit Union;
	"B" Multi-Family;	Sycamore Park
WEST:	"LC" Limited Commercial;	Vacant restaurant building

PUBLIC SERVICES: This site has access to West Street, a four-lane arterial, and 13th Street North, a four-lane arterial, both with left-turn lanes. 1997 ADTs were 17,141 on 13th Street North and 11,750 on West Street. 13th Street is scheduled for widening to a five-lane standard, with a continuous two-way center left turn lane from West Street to St. Paul in 2008 in the City of Wichita 2000-2009 Capital Improvements Plan. Municipal water and sanitary sewer, services are available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area for commercial use. The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations.

RECOMMENDATION: Based on information available prior to the public hearing, Staff recommends that the requested "Conditional Use" for nursery and garden center be APPROVED, subject to the following conditions:

1. The seasonal nursery and greenhouse shall be developed in general conformance with the site plan, attached hereto and made a part of this application.
2. The seasonal nursery and garden center shall be located in a temporary structure and shall operate for no more than 120 days during a calendar year.
3. The nursery/garden center shall conform to all requirements of Section III-D.6.z of the Unified Zoning Code. No chain link fencing shall be permitted as part of the screening requirements.
4. Prior to the utilization of the outdoor garden area covered by this amendment, the applicant shall annually submit a report to the Zoning Enforcement Division of the Office of Central Inspection that demonstrates compliance with the approved site plan and conditions specified in this amendment.
5. Any violation of the conditions approved as a part of this request shall render the "Conditional Use" null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area has commercial uses located on four corners of 13th Street North and West Street, and to the east of the site, although none of the other uses involve outdoor display/storage. The proposed seasonal nursery and garden center is located close to the Dillons building and away from 13th Street and West Street. A park is located to the northeast of the rear triangular portion of the site that is used as off-street parking.
2. The suitability of the subject property for the uses to which it has been restricted: This portion of the Dillons site is currently used for parking, but has been used as a temporary seasonal nursery and garden center in previous years.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The nursery and garden center would be visible to traffic travelling along 13th Street North, but visibility would be lessened by its placement near the front of the grocery store rather than near the street and by existing screening on the east of the parking lot.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: Commercial development on this site conforms to the adopted Comprehensive Plan.
5. Impact of the proposed development on community facilities: The addition could potentially generate a small amount of additional traffic by increasing the number of retail functions operating on the site. However, most patrons would be expected to be shopping at Dillons for other retail items, rather than making a separate trip to the garden center. The existing arterial should be adequate for handling the modest traffic increase generated by the nursery and garden center.

MCKAY "Mr. Chair, I will have to abstain on this item. I own a Quik-Trip location at 47th Street and Seneca, which the Dillon's Corporation owns. I will step down because of conflict of interest."

GAROFALO "Okay."

GOLTRY "This case is very similar to the cases that we heard at a previous MAPC meeting about a month ago where we had five applications for seasonal nursery and garden centers for Dillons. The difference is that all five of those were associated with Community Unit Plans and this is a stand-alone which is associated with a Conditional Use because there is no Community Unit Plan in place for this smaller center. This is a very small site that they are proposing to use, located right off the corner of the end of the building. It is commercial along 13th Street, but beyond 13th, there are apartments.

The proposed site plan addresses all of the requirements of seasonal nursery and garden centers with the exception that they don't have a specific place for off-street loading and parking, but they do have ample area right along the area to do so without it being an inconvenience. There are commercial uses on all four corners of the intersection as well as on all sides of this use, except for Sycamore Park. I should have pointed out that beyond the Dillons to the north is KAKE-TV, a fairly large facility. It conforms with the Comprehensive Plan with the recommendation for commercial on this corner. The conditions that we have attached to it are the same as the conditions that we heard in the previous cases for Dillons with the exception that I did include the seasonal use being 120 days in duration, which was added by the Commission at the previous hearings. In addition, we specified that no chain-link fencing could be used as any part of their screening, which is also the case in the others because chain-link is not an approved fencing material within CUPs. I will stand for questions."

GAROFALO "Donna, on the 120 days in the other cases, did we have anything about removal of the structure?"

GOLTRY "No, we did not. What they have to do is comply with the seasonal temporary nature of the structure with OCI, who would make them take it up and then they would do follow-up inspections to remove it."

GAROFALO "You don't think we need that in there?"

GOLTRY "We could add it, but it is probably taken care of through OCI."

MICHAELIS "Donna, do I understand the 120 days to be a total of 120 days out of the year, whether it is broken up into spring, summer and fall, however it is broken up?"

GOLTRY "Right. I would think that they would want to put it up and down only one time because they hit their season from the early spring through mid-summer, when they take them down."

GAROFALO "Are there any other questions? Okay, we will hear from the applicant."

ROB HARTMAN "I am here on behalf of the applicant. We are in agreement with the staff comments. If you have any questions, I will be glad to answer them for you now."

GAROFALO "Are there any questions of the applicant? No? Is there anyone else to speak in favor of this item? Is there anyone here to speak in opposition? Seeing none, we will take it back to the Commission."

MOTION: Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The area has commercial uses located on four corners of 13th Street North and West Street, and to the east of the site, although none of the other uses involve outdoor display/storage. The proposed seasonal nursery and garden center is located close to the Dillons building and away from 13th Street and West Street. A park is located to the northeast of the rear triangular portion of the site that is used as off-street parking. The suitability of the subject property for the uses to which it has been restricted: This portion of the Dillons site is currently used for parking, but has been used as a temporary seasonal nursery and garden center in previous years. Extent to which removal of the restrictions will detrimentally affect nearby property: The nursery and garden center would be visible to traffic travelling along 13th Street North, but visibility would be lessened by its placement near the front of the grocery store rather than near the street and by existing screening on the east of the parking lot. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: Commercial development on this site conforms to the adopted Comprehensive Plan. Impact of the proposed development on community facilities: The addition could potentially generate a small amount of additional

traffic by increasing the number of retail functions operating on the site. However, most patrons would be expected to be shopping at Dillons for other retail items, rather than making a separate trip to the garden center. The existing arterial should be adequate for handling the modest traffic increase generated by the nursery and garden center.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The seasonal nursery and greenhouse shall be developed in general conformance with the site plan, attached hereto and made a part of this application.
2. The seasonal nursery and garden center shall be located in a temporary structure and shall operate for no more than 120 days during a calendar year.
3. The nursery/garden center shall conform to all requirements of Section III-D.6.z of the Unified Zoning Code. No chain link fencing shall be permitted as part of the screening requirements.
4. Prior to the utilization of the outdoor garden area covered by this amendment, the applicant shall annually submit a report to the Zoning Enforcement Division of the Office of Central Inspection that demonstrates compliance with the approved site plan and conditions specified in this amendment.
5. Any violation of the conditions approved as a part of this request shall render the "Conditional Use" null and void.

LOPEZ moved, **MARNELL** seconded the motion, and it carried with 12 votes in favor. There was no opposition. McKay abstained. Carraher was not present.

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4. **Case No. CU 560** – Mahmoud Fazelipour (owner); Harvey and Linda Farha (Contract Purchasers); Mallard Real Estate, c/o Dennis Schmidt (Agent) request Conditional Use to allow a personal care service on property described as:

Lot 3, except the East 62 feet thereof, Jim Fisher Addition, Wichita, Kansas, Sedgwick County, Kansas. Generally located west of Woodlawn on the south side of Central (5921 E. Central).

LISA VERTS, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant is requesting a Conditional Use to allow a personal care service on 0.17 acres of platted property zoned "GO" General Office in the Jim Fisher Addition located west of Woodlawn on the south side of Central. The request is being made to allow the applicant (contract purchaser) to open a barber and beauty shop at this location. Currently, this site is a single-family residence, but will be converted to allow the intended use. The current owner previously constructed a paved parking area in the rear yard, south of the structure, in anticipation of using this site for other than residential uses. Personal care services are allowed as a permitted use in the "NR" Neighborhood Retail district, but require a Conditional Use permit in the "GO" district.

The surrounding uses are mixed in nature. There are single-family homes to the south, east and west. However, many of the homes on the south side of Central between Brookside Parkway and Hillcrest Avenue have converted to office and personal care uses. Across Central Avenue is a variety of commercial, retail, and restaurant uses.

The applicant submitted a site plan that shows the re-use of the existing home as the barber/beauty shop. The applicant proposes to accommodate parking to the rear of the existing structure, using the existing paved parking area. The square footage of the structure necessitates four parking spaces, one of which shall be handicap accessible; these requirements can be easily met given the paved area south of the structure. The driveway to this lot and rear parking area is temporary, until such time that the property to the east is re-developed. At this time, as per the plat and accepted access management practices, access would be relocated from the west side to the east side of the lot and shared between the two parcels of Lot 3, with parking and cross-lot access at the rear of all structures.

CASE HISTORY: This history is intended to provide an idea of how the property owners and the Planning Commission planned for redevelopment on the south side of Central Avenue when the property was rezoned and replatted in 1987 and 1988, and a portion subsequently rezoned in 1996.

The lots south of Central Avenue between Brookside Parkway and Hillcrest Avenue were rezoned to "GO" General Office on December 8, 1987. This rezone approval was subject to re-platting, with the direction that the plat should address the location of housing, existing and proposed driveway locations, proposed parking areas, setbacks, and the grouping of lots, with joint use of access and circulation to rear lots to be encouraged. The zone change was also subject to a restrictive covenant that prohibited any of these lots from being combined or utilized in any way with the residentially zoned property to the south and fronting on Oakwood Drive. The restriction was intended to prohibit any Conditional Use for off-street parking on any lots that front Oakwood Drive by owners of the lots along Central Avenue.

The area was re-platted as Jim Fisher Addition on July 28, 1988. The plat combined several of the lots from the older plat (Oakwood Estates 2nd Addition) into a 5-lot plat, with each lot limited to one access opening to Central Avenue. This application is for a Conditional Use on a portion of one of those 5 lots. The consolidation of the existing access drives was to occur incrementally as the lots redeveloped.

On January 9, 1996, the Wichita City Council approved rezoning for the west portion of Lot 5, Jim Fisher Addition to "NR" Neighborhood Retail for use as a beauty salon. This rezone was subject to a restrictive covenant being placed on the property that restricted the uses to those allowed in the "GO" General Office district and a hair stylist salon. Additionally, this restrictive covenant stated that when the remaining portions of Lot 5 were redeveloped, the subject property shall provide joint access from a paved rear parking area, south of the structure. At such time parking shall be removed from the front of the structure and replaced with landscaping. Item 3 of the restrictive covenant states that "the subject property shall provide access to Lot 4, Jim Fisher Addition, along the west property line for circulation between the rear parking areas."

In keeping with the intent of MAPC and the re-plat to the Jim Fisher Addition, conditions stipulated for other properties in this area should apply to this request.

ADJACENT ZONING AND LAND USE:

NORTH: "LC" – "Hometown Buffet" and other commercial, retail, and office uses

SOUTH: "SF-6" – Single-Family Home

EAST: "GO" – Single-Family Home

WEST: "GO" – Single-Family Home

PUBLIC SERVICES: Public services are available to this site. Access to this site is from Central Avenue, a designated arterial. Central Avenue has recorded 1997 traffic volumes of 23,000 average daily trips (ADTs) west of Woodlawn with projected ADTs of 29,000 by 2030. There are expansion plans for Central and Woodlawn Avenues to make them 5-lane arterials.

CONFORMANCE TO PLANS/POLICIES: The Land Use map of the Comprehensive Plan identifies this area as being appropriate for a mixture of office and medium-density residential uses. Although a barber and beauty shop is considered more retail in nature by the Unified Zoning Code, this use is permitted in the General Office zoning district as a Conditional Use where the location and circumstances are appropriate.

RECOMMENDATION: Based on information available prior to public hearings, planning staff recommends that the request for a Conditional Use be APPROVED, subject to the following conditions:

1. The applicant shall obtain all applicable permits, including but not limited to: building, health, and zoning.
2. The applicant shall provide parking south of the existing structure in the paved rear yard with access to the parking area along the west property line. This access off of Central Avenue shall be temporary, until such time as the other property in Lot 3 (east), Jim Fisher Addition, is redeveloped for other than residential uses. At such time, the applicant shall provide joint access to the rear parking lot along the east property line with cross-lot access, remove the driveway along the west property line, and share in the construction of a standard two-lane driveway to the parking area.
3. The owner of the subject property shall provide access to Lot 2, Jim Fisher Addition, along the west property line for circulation between the rear parking areas, unless the city engineer determines that grading considerations make this impractical.
4. Any violation of these conditions shall render this Conditional Use permit null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The south side of Central is characterized by a mixture of residential uses, home occupations, and office uses as permitted in the "GO" General Office district, with some specific use exceptions. The requested Condition Use for a personal care service would be consistent with the zoning surrounding the subject property in three directions.
2. Suitability of the subject property for the uses to which it has already been restricted: The subject property could be developed with uses as stipulated by the "GO" General Office District. The Unified Zoning Code allows for additional uses through the application of a Conditional Use permit, provided the applicant and site meet the review criteria as stipulated by said Code.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: This area is transitional in nature, with a general use shift from residential to office and service uses. With the provision of parking being located at the rear of the property and appropriate screening from the residential property, the approval of this Conditional Use permit should not have significant impact on the surrounding property owners or the safety of traffic along Central Avenue.

4. Conformance of the requested change to adopted or recognized Plans/Policies: The zoning code anticipated this type of use and makes specific provision for it. Approval of this request will not be contrary to any Comprehensive Plan policies or guidelines.
5. Impact of the proposed development on community facilities: None Identified, provided the parking area is placed at the rear of the subject property, south of the existing structure.

VERTS "The applicant wishes to take the existing residential home and use it for a beauty salon/barber shop. This may sound familiar and this area may look familiar. You approved the same type of Conditional Use except it was for a tailor shop on property slightly east of this. As I mentioned, there is a residence on this lot that is being used as a single-family residence. At one point, the owner of that house had wanted to use this facility for something other than a single-family residence and had paved the entire back yard for parking, so it is set up for parking and there is ample parking space provided for this use.

To the rear of this lot is still single-family residential zoning, and across the street is commercial development. The conditions staff recommends are very similar to the case you heard on December 16. Those conditions being that the existing driveway, as it goes to the rear yard, shall be a temporary driveway until such time that the property to the east is redeveloped for other than non-residential uses. This condition is because that whole side of Central that was rezoned to General Office was also replatted at the same time. Those individual residential lots were made into larger lots and given one point of access for each lot.

So this lot here (indicating) is actually in conjunction with the house that is to the east, so once that redevelops into something other than a residential use, the driveway on this side of the lot would then move to the east side, and that would be a shared driveway back to parking lots at the rear of both of those structures. Also, at the time that the house to the west redevelops, we would like to see cross lot access between those two lots in the back as well. If there are any questions, I will be happy to answer them."

MCKAY "In the past, do you have a layout of this driveway configuration?"

VERTS "As it is right now?"

MCKAY "No, no, as you proposed. I know that at one time we had a question, and here is another example. The drive is going to be on the west of the building until the one on the east develops. Do we have an overall plan somewhere that we can have as Commissioners so when this comes up again, we can have a reference?"

VERTS "I haven't seen one. I think it was a conceptual plan when that plat was submitted, but I haven't seen anything on paper."

MCKAY "It is kind of confusing for some of the new people who haven't been here what is really going on, so even if it was a conceptual layout where we could see it, it would help a lot."

VERTS "I understand."

WARREN "Did the plat itself show some restrictions there to egress/ingress?"

VERTS "It just gave one point of access per lot."

WARREN "That being a new lot?"

VERTS "Right, the new lots. You can imagine that all of these lots looked like this (indicating). They were individual residential lots. When they were replatted, this is one lot, this is one lot. Three of these were pushed into one lot, two here, three, three, and I can't quite see that one down there."

WARREN "They have all agreed to this plat?"

KROUT "Yes, they did. We will have them sign an agreement."

GAROFALO "Are there any other questions?"

MARNELL "I assume that the dedication they are going to make on the east side of their lot for the joint driveway would only be their portion of the driveway and part of it would be contributed from the other lot?"

VERTS "Correct."

MARNELL "Okay, thank you."

GAROFALO "Are there any other questions? Okay, we will hear from the applicant."

HARVEY FARHA "I am the applicant for this property. I am going to put in a hair styling salon. The house is basically a two-bedroom house and we are going to use it for a 2 or 3 station hairstyling salon. Are there any questions?"

GAROFALO "Are you in agreement with the conditions in the staff report?"

FARHA "As far as the driveway and the parking?"

GAROFALO "Yes."

FARHA "I don't have a problem with it. In fact, it would be better for me if it was done that way because Central is so hard to get out on, so if there was more than one way to get in and out or maneuverability, it would be better for me."

GAROFALO "Are there any other questions of the applicant? Thank you. Is there anyone else to speak in support of this application? Is there anyone to speak in opposition? Okay then, we will bring it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The south side of Central is characterized by a mixture of residential uses, home occupations, and office uses as permitted in the "GO" General Office district, with some specific use exceptions. The requested Condition Use for a personal care service would be consistent with the zoning surrounding the subject property in three directions. Suitability of the subject property for the uses to which it has already been restricted: The subject property could be developed with uses as stipulated by the "GO" General Office District. The Unified Zoning Code allows for additional uses through the application of a Conditional Use permit, provided the applicant and site meet the review criteria as stipulated by said Code. Extent to which removal of the restrictions will detrimentally affect nearby property: This area is transitional in nature, with a general use shift from residential to office and service uses. With the provision of parking being located at the rear of the property and appropriate screening from the residential property, the approval of this Conditional Use permit should not have significant impact on the surrounding property owners or the safety of traffic along Central Avenue. Conformance of the requested change to adopted or recognized Plans/Policies: The zoning code anticipated this type of use and makes specific provision for it. Approval of this request will not be contrary to any Comprehensive Plan policies or guidelines. Impact of the proposed development on community facilities: None Identified, provided the parking area is placed at the rear of the subject property, south of the existing structure.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The applicant shall obtain all applicable permits, including but not limited to: building, health, and zoning.
2. The applicant shall provide parking south of the existing structure in the paved rear yard with access to the parking area along the west property line. This access off of Central Avenue shall be temporary, until such time as the other property in Lot 3 (east), Jim Fisher Addition, is redeveloped for other than residential uses. At such time, the applicant shall provide joint access to the rear parking lot along the east property line with cross-lot access, remove the driveway along the west property line, and share in the construction of a standard two-lane driveway to the parking area.
3. At such time when the property to the west is redeveloped for other than residential uses, the owner of the subject property shall provide access to Lot 2, Jim Fisher Addition, along the west property line for circulation between the rear parking areas, unless the city engineer determines that grading considerations make this impractical.
5. Any violation of these conditions shall render this Conditional Use permit null and void.

MICHAELIS moved, **MARNELL** seconded the motion, and it carried unanimously (13-0).

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5. **Case No. Z-3351** – CAP Carpet, Inc., c/o Aaron Pirner (Owner); Greg Perkins (Agent) request zone change from "TF-3" Two-Family Residential to "LC" Limited Commercial on property described as:

Lots 4 & 5, Block 1, Carriage House Plaza Addition, Sedgwick County, Kansas. Generally located north of Kellogg and west of Woodchuck.

LISA VERTS, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant requests a zone change from the "TF-3" Two-Family Residential zoning district to the "LC" Limited Commercial zoning district for the 0.55-acre platted Lots 4 and 5, of the Carriage House Plaza Addition located west of Woodchuck and south of Hendryx Lane. The application area is to be used, along with the "LC" zoned property adjacent to the south, for the future home of the Stone Mountain Carpet Mill Store, which will be re-locating from their present location because of the reconstruction of the Kellogg-Tyler intersection.

The two lots directly to the west were recently rezoned to "LC" Limited Commercial in conjunction with a Conditional Use to allow outdoor display for Ultra Modern Pool and Patio (different applicant). The MAPC approved a Protective Overlay (PO) on these two lots to provide additional buffering for the residents to the north. This PO required a masonry wall to be built along the 25-foot building setback line along Hendryx and additional landscaping within the 25-foot building setback and north of the masonry wall. For consistency with the property to the west and the commercial development in this area, a PO, which includes the restriction of access along Hendryx, should be attached to the subject property.

The properties surrounding the application area are zoned "LC" Limited Commercial to the west, south, and east. The property to the west will be used for pool and patio sales and the property to the east is currently used for financial services. The property to the south is currently vacant, but will be used in conjunction with the subject lots for general retail sales. The lots to the north are zoned "SF-6" Single-family residential and used for residential uses.

CASE HISTORY: The subject property was platted as the Carriage House Plaza Addition in 1971 and rezoned to "LC" Limited Commercial and "TF-3" Two-family Residential, subject to that plat.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-6" – Single-Family Residence
SOUTH: "LC" – Vacant, future home of Stone Mountain Carpet Mill Store
EAST: "LC" – Farm Credit Services
WEST: "LC" – approved for Ultra Modern Pool and Patio

PUBLIC SERVICES: Municipal water and sewer service is available to this site. The property has access to Kellogg Drive, a frontage road for Kellogg (US-54). Kellogg is shown as a divided four-lane freeway on the 2020 Transportation Plan with existing traffic volumes of approximately 40,000 average daily trips (ADT). The 2030 Transportation Plan projects traffic along Kellogg to increase to approximately 90,000 ADT for this segment. The latest edition of the Transportation Improvement Program shows Kellogg becoming a 6-lane freeway around 2001-2.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan designates this area as appropriate for commercial uses.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request to extend "LC" zoning to Hendryx be APPROVED, subject to a Protective Overlay with the following provisions:

- A. A masonry wall shall be constructed along the 25-foot building setback line of Hendryx Street.
- B. Landscaping shall be planted on the north side of the wall at the rate of at least the equivalent of 1 shade tree or 2 ornamentals or 10 shrubs per 30 feet where across the street from "SF-6" zoning.
- C. There shall be no points of access along the Hendryx frontage.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The properties surrounding the application area are a mix of zoning districts and land uses. The lots to the north are zoned "SF-6" Single-family residential and used for residential uses. To the east of the subject property are lots zoned "LC" Limited Commercial that is used as a financial institution. The area to the south is the existing vacant "LC" zoned property and Kellogg Highway (US-54). South of the US-54 is "LI" Limited Industrial zoned land used for car sales. To the west is land that is zoned "LC" and the future home of Ultra Modern Pool and Patio. The restrictions applicable by the Unified Zoning Code and supplemented as stated above through the Protective Overlay have further made this request compatible with the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The application area is currently zoned "TF-3" Two-Family Residential. This site, which is adjacent to "LC" zoning on three sides, would be inappropriate for single- or two-family residences.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: With the provisions of the Unified Zoning Code and the Protective Overlay, detrimental impacts on the adjacent properties should be minimized.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies this area appropriate for commercial uses. The proposed use is in conformance with the Adopted Plan guidelines.
5. Impact of the proposed development on community facilities: None identified.

VERTS "Staff is in support of the rezoning with the Protective Overlay. We would also like to add, in addition to the masonry wall and the landscaping north of the masonry wall that there be no points of access on Hendryx, the unimproved street in the back. I would stand for questions at this time."

WARNER "Are there any requirements on the height of this wall?"

VERTS "There are not. Perhaps Dale can recall if there were any on the Ultra-Modern wall."

MILLER "The height was to be 6 to 8 feet."

VERTS "Okay."

GAROFALO "Should we include that?"

VERTS "Yes, we can include that."

MARNELL "Should we require this wall to match up with the one that we are putting on the property next to it?"

VERTS "Match in appearance? That is a fair question."

MARNELL "It seems like it should because you have the folks across the street facing that way. Similar material, etc."

WARREN "I think this is going to be common, then, with the lot to the south and this is going to join up and become one."

WHEELER "What is the height limitation on the building? Is it like 35 feet?"

VERTS "I think in the 'LC' it is 35 feet."

KROUT "I think it could be taller than 35 feet. Dale, what is the base height in 'LC'?"

MILLER "But this is in the CUP, isn't it?"

VERTS "No."

MILLER "Okay, then yes, it can be taller in 'LC'. I forget exactly what it is, but I will look it up for you."

WHEELER "The reason I asked if the Ultra Modern building was an existing building and is that an established height."

MILLER "It is 80 foot plus 2 foot of additional height for each foot of setback."

KROUT "We probably haven't looked at the Zoning Code standards for a long time, but whether you are talking about General Office, Limited Commercial or General Commercial, we are very liberal about buildings, but the market here hasn't ever learned that people are going to multi-story buildings. So unless there was a specific situation where there was a need to limit building heights, we have felt like the size of parcels like this in the market are pretty much limiting these to one and two story heights."

WARREN "Well, even a two story building would be substantially less than 35 foot."

WHEELER "Yes, and 80 feet is a whole other story."

VERTS "But Marvin, we can only limit that to the back two lots, correct? We couldn't say anything about the front lot that is not part of this application, right?"

KROUT "No. Because they are going to be used together, and because it is in single ownership, we could possibly."

WARREN "Is there any kind of a site plan on this to see is he going to use that for parking or anything?"

VERTS "No. There was no site plan submitted."

GAROFALO "Are there any other questions? Okay, then we will hear from the applicant or agent."

GREG PERKINS "I am with CAP Carpet, Inc. Stone Mountain carpet is a division of CAP Carpet, and we have no problem in adhering with the Protective Overlay provisions here and we will probably work real closely with Ultra Modern so that the wall will match. We might just do it at the same time they want to do their wall."

As far as the building, it is really going to replace our building that we have at Tyler and Kellogg right now, so it is not going to be more than two stories."

GAROFALO "Are there any questions of the applicant?"

HENTZEN "Greg, I believe that we are insisting for you to bring that wall in 25 feet and then put some landscaping on the outside of it?"

PERKINS "Right, on the north of the wall."

HENTZEN "are you accustomed to taking care of that part of your property if it is on the outside of the wall?"

PERKINS "Yes, we know that we will need to do that. And there probably will be parking just on the south side of the wall, too."

HENTZEN "Okay."

WHEELER "Would you have a problem if we would limit the height restriction at least back so far to two stories, or whatever that would be equivalent to?"

PERKINS "That would be fine."

GAROFALO "Are there any other questions? Okay, thank you. Is there anyone else to speak in support of this application? Is there anyone to speak in opposition? Seeing none, we will take it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The properties surrounding the application area are a mix of zoning districts and land uses. The lots to the north are zoned "SF-6" Single-family residential and used for residential uses. To the east of the subject property are lots zoned "LC" Limited Commercial that is used as a financial institution. The area to the south is the existing vacant "LC" zoned property and Kellogg Highway (US-54). South of the US-54 is "LI" Limited Industrial zoned land used for car sales. To the west is land that is zoned "LC" and the future home of Ultra Modern Pool and Patio. The restrictions applicable by the Unified Zoning Code and supplemented as stated above through the Protective Overlay have further made this request compatible with the neighborhood. The suitability of the subject property for the uses to which it has been restricted: The application area is currently zoned "TF-3" Two-Family Residential. This site, which is adjacent to "LC" zoning on three sides, would be inappropriate for single- or two-family residences. Extent to which removal of the restrictions will detrimentally affect nearby property: With the provisions of the Unified Zoning Code and the Protective Overlay, detrimental impacts on the adjacent properties should be minimized. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies this area appropriate for commercial uses. The proposed use is in conformance with the Adopted Plan guidelines. Impact of the proposed development on community facilities: None identified.) I move that we recommend to the governing body that the application be approved, subject to the following:

1. A 6- to 8-foot masonry wall shall be constructed along the 25-foot building setback line of Hendryx Street. This wall shall be constructed of similar materials and have the same general appearance as the wall required for Lots 6 and 7, directly to the west.
2. All structures within the subject property shall be limited to a maximum height of 35 feet.
3. Landscaping shall be planted on the north side of the wall at the rate of at least the equivalent of 1 shade tree or 2 ornamentals or 10 shrubs per 30 feet where across the street from "SF-6" zoning.
4. There shall be no points of access along the Hendryx frontage.

WHEELER moved, **OSBORNE-HOWES** seconded the motion.

GAROFALO "Is there any discussion? Okay."

VOTE ON THE MOTION: The motion carried with 13 votes in favor and no opposition.

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- 6a. **Case No. Z-3352** – Five Star Investors LLC c/o Doug Malone (Contract Purchaser), Chad M. Brehm, and R. A. King (Applicants) Baughman Company PA c/o Russ Ewy (Agent) request zone change from "GO" General Office and "B" Multi-Family Residential; and
- 6b. **Case No. CU-563** – Five Star Investors LLC c/o Doug Malone (contract Purchaser), Chad M. Brehm, and R. A. King (Applicants) Baughman Company PA c/o Russ Ewy (Agent) request a Conditional Use to allow a car wash within 200 feet of a residential zoning district, on property described as:

Lot 1, Andrew Boyd Addition, Wichita, Sedgwick County, Kansas; together with Lots 39-48, Block 13, East Highlands, Sedgwick County, Kansas. Generally located on the northwest corner of Central and Old Manor.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting a zone change to "LC" Limited Commercial and a Conditional Use to allow a car wash to be located within 200 feet of a residential zoning district. The application area is a 1.1 acre platted tract located at the northwest corner of Central and Old Manor. The site is currently zoned "GO" General Office and "B" Multi-Family Residential.

The site is currently developed with six fourplexes, four of which are vacant including one that partially burned in a fire. The site of the two occupied fourplexes is proposed for "LC" Limited Commercial zoning with no use specified other than redevelopment for commercial use. A car wash in "LC" Limited Commercial zoning is proposed for the site of the four vacant fourplexes.

The attached site plan shows an eight-bay car wash with six self-service bays and two automatic bays without dryers. These wash bays are located 63 feet south of the north property line and 30 feet north of the street right-of-way for Central. The site plan depicts four vacuums located north of the wash bays and two vacuums located both east and west of the wash bays in the parking stalls. There are a total of 16 parking stalls to be used for drying or vacuuming, which are split evenly along the east and west property lines. Two vehicle queue spaces are depicted for the self-service bays, and six vehicle queue spaces are depicted for the automatic bays. The facility would have two access drives to Central. A landscaped buffer with trees every 20 feet is depicted along the north property line. A landscaped street yard with seven trees is depicted along Central and is located primarily in the street right-of-way. A six-foot high concrete wall is depicted along the north and west property lines. A sign is depicted at the southwest corner of the site.

Property to the north of the site is zoned "SF-6" Single Family Residential and is developed with single family residences. Property to the south is zoned "LC" Limited Commercial and is developed with an auto repair shop and a commercial strip center containing a restaurant, a bookstore, and vacant storefronts. Property to the east is zoned "NR" Neighborhood Retail and is developed with fourplexes. Property to the west is zoned "GO" General Office and is developed with fourplexes that have been converted into offices.

Key Unified Zoning Code car wash "supplementary use requirements" include: buildings to be located at least 35 feet from arterials and 20 feet from other street right-of-way; 60 feet from the lot line of any residentially zoned lot, unless the property is being used for a nonresidential use permitted by-right in the underlying district; fencing, a minimum of six feet in height shall be provided along the interior side and rear property line, when adjacent to a dwelling; all area utilized for washing or drying, including ingress and egress, shall be paved; lighting shall comply with lighting standards in the code; no string-type lighting shall be permitted; vehicle queue spaces for four vehicles for self-service bays and three vehicles per 20 lineal feet of wash bay for automatic bays shall be provided; and signage as per the sign code.

As depicted in the attached site plan, the project fails to comply with several of the supplementary use requirements for car washes. Therefore, planning staff recommends that approval of the Conditional Use be subject to approval of a final site plan by the Director of Planning.

CASE HISTORY: The site is platted as part of the East Highlands Addition, approved August 5, 1924, and the Andrew Boyd Addition, approved February 21, 1988. The western portion of this site was approved for a zone change to "BB" Office (now "GO" General Office) on April 28, 1987.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-6" Single Family
SOUTH: "LC" Vehicle Repair, Limited; Retail, General; Restaurant
EAST: "NR" Multi-Family
WEST: "GO" Office, General

PUBLIC SERVICES: The site has frontage to Central, a four-lane arterial. Central has traffic volumes of 24,500 vehicles per day. The 2030 Transportation Plan estimates the volume for Central will increase to 31,000 vehicles per day. Central is scheduled in the City's 2000-2009 Capital Improvement Program to be widened to five lanes between Oliver and Woodlawn in 2003. Municipal services are currently provided to this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within one year the following conditions:

- A. The site of the car wash shall be developed and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code.
- B. No dryers shall be associated with automatic car wash bays.
- C. The applicant shall submit a landscape plan for approval by the Planning Director, prior to issuance of a building permit, that meets the ordinance's requirements and, additionally, provides for conifer trees planted every 15 feet along the north property line of the car wash as a year-round buffer to residential properties.
- D. The applicant shall submit a revised car wash site plan for approval by the Planning Director, prior to issuance of a Conditional Use, that provides for an additional five feet of contingent street right-of-way for Central; provides a

minimum 28 foot building setback from the contingent street right-of-way; locates the sign north of the contingent street right-of-way; locates all vacuums along the east and west property lines in the parking stalls no closer than 45 feet from the north property line; and indicates that the concrete screening wall and car wash façade shall be a dyed red brick pattern. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.

- E. The applicant shall apply for a Zoning Adjustment to reduce the car wash building setback from Central by a maximum of 20%. The Conditional Use shall be contingent upon approval of this Zoning Adjustment.
- F. Any violation of the conditions of approval shall declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The subject property is located along a stretch of Central that has been slowly converting from residential uses to commercial and office uses over the past several decades. Property to the north of the site is zoned "SF-6" Single Family Residential and is developed with single family residences. Property to the south is zoned "LC" Limited Commercial and is developed with an auto repair shop and a commercial strip center containing a restaurant, a bookstore, and vacant storefronts. Property to the east is zoned "NR" Neighborhood Retail and is developed with fourplexes. Property to the west is zoned "GO" General Office and is developed with fourplexes that have been converted into offices.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "GO" General Office, which accommodates office development, and "B" Multi-Family Residential, which accommodates very high density, multi-family residential development. The property is currently developed with multi-family residential uses; however, a majority of the units are vacant, have declined to a state of major housing code violations, and appear to not be viable for residential use without substantial reinvestment.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized due to the various setbacks, screening, and landscaping requirements.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials. This site has frontage to Central, a four-lane arterial. The Commercial Locational Guidelines also recommend that commercial sites should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The various setbacks, screening, and landscaping requirements for car washes should minimize any adverse impacts on surrounding residential areas.
5. Impact of the proposed development on community facilities: Central, especially after widened to five lanes, should have sufficient capacity to handle the additional traffic generated by the car wash and other commercial development on the site. Other community facilities should not be adversely impacted.

KNEBEL "The site is currently developed. There are six four-plexes on the site. Those are proposed to be re-developed into a car wash and to an undetermined commercial use on the corner of Old Manor and Central.

The site plan did not mention this, but the applicant mentioned it to us in our pre-application meeting, that the concrete wall would be stamped brick pattern and red dye. I also mentioned that the walls of the car wash would be the same and they reminded me that they only committed to the brick stamp pattern on the wall and just the red dye on the wall of the car wash. I am fine with changing that condition to say that the wall would be dyed red brick pattern and the car wash façade would just be dyed red and not the brick pattern. I am available for questions."

MICHAELIS "On that contingent right-of-way, did I understand you right to say that that is going to go to 50 foot for the street?"

KNEBEL "Yes, it would be a total of 50 feet with the additional 5 feet."

MICHAELIS "If that was exercised from the central line of Central Avenue, where is that going to be?"

KNEBEL "Where would it go to? It would go to about right here on the site plan (indicating). This portion thereabouts is currently platted in that pattern, 45 feet of right-of-way and 5 foot contingent street right-of-way. We are just asking that when they replat that they continue that same dedication pattern across the entire property."

MICHAELIS "Would that have an affect if that did happen on that 30 foot that is between the curb now and the front of the car wash? Is that still a usable base? Or maybe I should ask the applicant that."

KNEBEL "As far as this space here? I would ask the applicant, but it is my understanding that they are okay with that."

OSBORNE-HOWES "On the top of Page 3, you said that the existing site plan failed to comply with several of the supplementary requirements. Are you saying that what you are recommending would then bring it into compliance?"

KNEBEL "This, along with a zoning adjustment."

MCKAY "The architect for this applicant is my nephew who offices in my office, so I will abstain from voting on this item."

GAROFALO "Are there any other questions? Seeing none, we will hear from the applicant or agent."

RUSS EWY "I am with the Baughman Company, I am the agent for the applicant. As Scott mentioned, there were several issues within the staff comments that we have addressed. If you would turn to the back page of the information that we just handed out to you, you will see a revised site plan. That site plan takes into account all of staff's conditions except for one, and I will get to that here in a minute.

To answer some questions that were raised of staff, by continuing the half-street right-of-way being 45 feet plus 5 feet of contingent street dedication, the relocation of the car wash north several feet, winding up with a worse-case scenario of having 28 feet between the right-of-way line and the front of the car wash, that will still work with site circulation and will not be an issue. Actually the site pretty much fits perfectly with Code requirements north to south, even with that contingent dedication.

The only issue, as I said, that we have with staff comments is the location of the vacuum cleaner islands, if you see them interspersed in the second queue of cars to the north of the car wash, you will see that we have intended to place those vacuums in that second bay for several different reasons. First, and primarily is to maintain a distance separation between the car wash islands themselves and the structure itself, just to prevent any type of safety problems that could occur with people walking in between the vacuum island and the car wash.

The second concern also has a rational basis, and that is that as the winds blow through the car wash, they tend to emit spray from people that are currently in the self-service bays washing. I don't think anybody wants to be with their car doors open vacuuming out their car in the first queue line behind those self-service bays. So we thought it would be a good idea, a normal business practice to put those vacuum cleaners in that second queue. We have offered staff a condition that was imposed on a similar car wash at 32nd and Rock Road, which is to have a condition written in our Conditional Use comments that would read that if there was any type of noise complaint received on the property that the applicant will then have to retrofit those vacuum cleaners with a cut-off, we would say at 10 o'clock. That has worked out very well at the other car wash that the applicants operate on North Rock Road. There has yet to be any complaints, whether it is trash, noise, or any other type of site disturbance.

So we felt that that has worked well in that location, which is very similar to this location. It is adjacent to residential. So, we would ask the Planning Commission to allow us those vacuum cleaners where they are shown on the site plan.

Also, in your packet, we have two letters from surrounding business people basically expressing their support for the project, the re-investment of the area. We also received here before the meeting, a letter from a Lloyd Clements, who, also, quite frankly, it looks like he is also supporting the re-investment along Central as long as several of his concerns are met. I think between what we have applied for and what staff has conditioned, I think that goes a long way in meeting this gentleman's concerns also. At this point I will be more than happy to answer any questions."

OSBORNE-HOWES "From the Clements letter, they are also talking about limiting the hours of operation of the car wash. Are you talking about that?"

EWY "No. Similar to the car wash at 32nd and North Rock Road, there were several members of the CPO at the time, as well as several of the direct adjacent property owners to the west were concerned about hours of operation and there again, similar to the cut-offs for the vacuum cleaners, we agreed that if it becomes a problem, if noise or any of the other negative impacts of such development would occur, that we would then go along with setting the hours of operation, perhaps we could retrofit those with cut-offs. In this situation, we have not had any problems with previous car washes in similar situations, and we would ask that we would be allowed to operate 24 hours a day as we do on other sites."

OSBORNE-HOWES "But you have dryers on the east and west sides, both times, I mean, you still have those. And what you are saying is that you feel that you also need to have vacuums basically about 30 some feet south of the property line? It's a lot closer than it was initially."

EWY "I probably misspoke myself. I showed these lines representing the various distances. I think what this would show would be that instead of 45 feet, we would be willing to go to 35 feet for the setback. I think that would meet our needs to move those further to the south by several feet."

HENTZEN "When you speak of dryer, you are speaking about the dryers drying the cars. When you speak of vacuums, it is when they are vacuuming the inside of the car?"

EWY "Yes, sir."

HENTZEN "So these drying stalls on this plan, is that for drying the cars, or is it the vacuums?"

EWY "That is simply where people pull off and either chamois off their cars after they have gone through the wash. Those are vacuum islands to the east and to the west as well as what is shown there to the north of the building. We have two automatic car wash bays. Obviously, most of those are fitted with some sort of drying mechanism at the end. We have agreed, as we did with previous sites to construct those without those drying units, so there will be no automatic or drying units per se. The only thing that will be generating noise that we are discussing here, I think are the vacuum cleaners."

KROUT "We didn't ask you, Russ, for an elevation drawing to show what this would look like from the street on Central, but it is the College Hill/Crown Heights area and it does have a kind of character to it. Can you describe what this will look like from the street in terms of wall and materials? Anything you can commit to."

EWY "Yeah, I will try a shot at it first, and the applicant is here and they may have a better understanding of what actual construction materials will be employed. What you will see along the exterior of the building, we will be proposing a mansard standing seam metal roof. The red dye is going to be incorporated in the building structure itself. It is the same color that will be used in the masonry wall that is going to be screening the site. We have a preliminary rendering of that concept with some blue decorative tile features at these locations, in between the stall openings. So I think it is going to have a very good street appearance, quite frankly."

And there again, I think this whole red dye concept came from a lot of the structures in the area versus the somewhat ordinary beige color that you see in a lot of the masonry walls around town. I think there was a lot of concern as far as the ability to give that as a condition. Doug, I am not sure if you have any desire to add to that."

BARFIELD "Has this been before the CPO?"

KROUT "We don't have a CPO and we don't have a District Advisory Board (DAB). We did send notices to probably half a dozen to a dozen neighborhood associations that are on our list, and that probably includes the Crown Heights Association and the College Hill Association. We don't have a formal group yet to bring these to, no."

HENTZEN "Was there an attempt? Did they talk to the owners on the back side?"

EWY "Yes. The applicant's have done that."

DOUG MALONE "My address is 150 North Market. Yes, we saw the neighbors to the north and showed them what we were going to be doing and offered the cut-offs in terms of the vacuums. To elaborate a little bit more on what Marvin was discussing and what Russ was discussing in terms of the elevations, what we are going to try to do is incorporate some colors, thus the red brick, to incorporate some colors that have somewhat of a polo feel. We will probably use some greens and reds, and we even talked about doing some decorative lighting on the front of this, no more than just from the standpoint of a good feel and a good look. But yes, to answer your questions specifically, we did visit with the neighbors."

GAROFALO "Did you meet with Mr. Clements?"

MALONE "No, this is the first I have seen of his letter."

GAROFALO "What was the response from the neighbors?"

MALONE "They see where the commercial is going to start occurring. The alternative to what is there right now has been a little bit unappealing to them and they just wanted to make sure that what we said we were going to do we were going to do, and we assured them of that."

GAROFALO "Are there any other questions? Thank you. Is there anyone else to speak in support of this application? Anyone to speak in opposition? Seeing none, we will bring this back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood): The subject property is located along a stretch of Central that has been slowly converting from residential uses to commercial and office uses over the past several decades. Property to the north of the site is zoned "SF-6" Single Family Residential and is developed with single family residences. Property to the south is zoned "LC" Limited Commercial and is developed with an auto repair shop and a commercial strip center containing a restaurant, a bookstore, and vacant storefronts. Property to the east is zoned "NR" Neighborhood Retail and is developed with fourplexes. Property to the west is zoned "GO" General Office and is developed with fourplexes that have been converted into offices. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "GO" General Office, which accommodates office development, and "B" Multi-Family Residential, which accommodates very high density, multi-family residential development. The property is currently developed with multi-family residential uses; however, a majority of the units are vacant, have declined to a state of major housing code violations, and appear to not be viable for residential use without substantial reinvestment. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized due to the various setbacks, screening, and landscaping requirements. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials. This site has frontage to Central, a four-lane arterial. The Commercial Locational Guidelines also recommend that commercial sites should have site design features which limit noise, lighting, and other activity from adversely impacting

surrounding residential areas. The various setbacks, screening, and landscaping requirements for car washes should minimize any adverse impacts on surrounding residential areas. Impact of the proposed development on community facilities: Central, especially after widened to five lanes, should have sufficient capacity to handle the additional traffic generated by the car wash and other commercial development on the site. Other community facilities should not be adversely impacted.) I move that we recommend to the governing body that the request be approved, subject to staff comments and the modification on the setback, and to the deletion of the requirement of moving those back vacuums and leave it as it appears on the site plan.

WARREN moved, **MICHAELIS** seconded the motion.

OSBORNE-HOWES "On the site plan, I think they showed 35 feet. You said 55 feet."

WARREN "Well, the last one I am looking at here...oh, okay, I see the 55 foot. Okay. Whatever it is, I don't think the slight movement one way or the other will make a difference."

OSBORNE-HOWES "I have a question. Marvin, part of what you asked for was to bring them to compliance. Is 45 feet part of that?"

KROUT "There is no standard on a car wash about how far a vacuum can be from the wall. We do have a noise ordinance. We have asked the Health Department to do a study, and I don't think they have gotten to it, but to do some studies about car washes and the noise from various elements of the car washes, but we really don't have that kind of information yet. They will be subject to the noise ordinance and that is forced on complaints, so if you don't add in the condition about cutting it off at 10 o'clock, and if a neighbor and property-owner complains, then it still will be subject to the noise ordinance. I just don't know how that would apply in the case of these kinds of uses."

MODIFIED MOTION:

That the request be approved, subject to the following:

1. The site of the car wash shall be developed and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code.
2. No dryers shall be associated with automatic car wash bays.
3. The applicant shall submit a landscape plan for approval by the Planning Director, prior to issuance of a building permit, that meets the ordinance's requirements and, additionally, provides for conifer trees planted every 15 feet along the north property line of the car wash as a year-round buffer to residential properties.
4. The applicant shall submit a revised car wash site plan for approval by the Planning Director, prior to issuance of a Conditional Use, that provides for an additional five feet of contingent street right-of-way for Central; provides a minimum 28 foot building setback from the contingent street right-of-way; locates the sign north of the contingent street right-of-way; locates all vacuums no closer than 35 feet from the north property line; and indicates that the concrete screening wall shall be a dyed red brick pattern, and the car wash façade shall be dyed red concrete. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
5. The applicant shall apply for a Zoning Adjustment to reduce the car wash building setback from Central by a maximum of 20%. The Conditional Use shall be contingent upon approval of this Zoning Adjustment.
6. If complaints are received by the Office of Central Inspection from neighboring property owners regarding noise from the vacuums, all vacuums on the property shall be retrofitted to the cease operation between 10 p.m. and 7 a.m.
7. Any violation of the conditions of approval shall declare the Conditional Use null and void.

WARREN moved, **MICHAELIS** seconded the motion.

OSBORNE-HOWES "I guess the only comment I have about that is that this still calls for a Conditional Use because it is really backed up close to single-family, and I hate to see us put car washes so close to single-family without some real hard and fast restrictions. I would like to know the rationale again from staff that says 45 feet is okay and 35 feet is not. So if I could have that."

KNEBEL "Actually, the applicant has offered to move them to 35 feet. They are shown at 30 feet on the site plan and the additional 15 feet was determined, based on the ability to get the eight vacuums in, four on each side within the space allowed in the parking stalls. If you made it more than 45 feet, they would have to eliminate the number of vacuums they had on their site plan to cut it back to six."

GAROFALO "So how many feet is it going to be? I am getting confused here."

KNEBEL "It is shown on the site plan currently at 30 feet from the property line, and they have offered 35 feet."

GAROFALO "And that is part of the motion?"

WARREN "Well, if it isn't, I would again modify it to accept their 35 foot offer."

WHEELER "And staff's recommendation is 45?"

KNEBEL "Right."

PLATT "I have been thinking a lot about car washes since our last meeting, and it seems to me that the whole bit about a Protective Overlay being required if it is 200 feet of a residential area is a very important element. I guess the position I am arriving at is that if there is neighborhood opposition to a car wash, I will support it only if there is a limit to the number of hours of operation. In this case, since there was no neighborhood opposition, I guess I will vote in favor of it."

GAROFALO "Commissioner Michaelis, did you approve of all of the amendments that he made?"

MICHAELIS "I think so, yes. I think it was 35 feet, which is as per their revised site plan, and the hours, if it becomes a problem, will be cut off."

OSBORNE-HOWES "I have been thinking about this particular one. I forgot to mention it before, but I was contacted and we talked about this a little bit. It will not affect my decision on this."

The problem I have is that it is still darn close to single-family, and I am afraid that if we say 35 feet on this one and it becomes a standard, and limiting it to 10 p.m., if there are calls of complaints seems fair, but that assumes that we all to go bed at 10 o'clock and we are up during the day and not everyone does that. So I don't know that that would solve the problems if there are, in fact, complaints about the noise and people hear the noise. And I know that you can hear that vacuum further than 35 feet. I can turn on my little vacuum outside and I know I can hear the neighbor's vacuum and they are further than 35 feet away. So I think this is a great idea and a great development, and I applaud the design and I think that is super. I think if they limited themselves in some other way, which might mean moving the vacuums as close as they could to the street, then I probably would say yes, but it doesn't say that they are going to do that, so I will vote against the motion."

MICHAELIS "This may be a question a question for Marvin, where did the 5-foot additional contingent right-of-way come from? If it wasn't for that, they couldn't move them back up to 40 feet."

KROUT "I don't think the contingent dedication has any effect on the site plan, does it?"

MICHAELIS "It would. If we didn't have that extra 5 feet, then it would be 40 feet."

KROUT "The reason we talked about it being contingent was so you could measure the minimum set back from the existing right-of-way and not from a future right-of-way. I don't think they could move the move the building 5 feet further to the south, can you? The reason we call it a contingent is so that they can measure it from the existing property line."

MICHAELIS "Okay, but right now, it is 28 feet from there to the building. If we didn't have that 5 foot, it could be 28 feet from the previous line, which would move the whole project."

KNEBEL "You are right. If you measured it from the 45 foot line instead of 50 foot, you could move the building 5 feet further to the south, and still get within the 20 per cent reduction."

MICHAELIS "So I guess I am asking which is more important, the contingent right-of-way or the extra 5 feet on the back end. Personally, I don't think you are going to be able to tell if there is 5 more feet on the vacuum."

MARNELL "I guess to some extent I agree with Commissioner Osborne-Howes that there is no standard. In that sense I would hate to see us establish one now. If it just starts to be arbitrary and we will move it 5 foot, and move it 5 foot without any kind of science attached to it. Noise can be measured in decibels, and if we don't have some type of standard that it has some kind of scientific basis, then it is just arbitrary and I can't support that. I am in favor of having it moved."

KROUT "We do have a noise ordinance. The noise ordinance does indicate that you can increase the decibels of background noise by more than 5 as measured over a certain period of time and there is a different standard for daytime and nighttime. What we don't have is the data on whether or not typically a car wash vacuum at a certain distance does or does not exceed that noise ordinance. So it is possible that whether or not someone complains, because usually we only enforce the ordinance when someone complains, so if it violates the noise ordinance in the daytime when it is operating and someone complains, they will have to shut off or move that vacuum cleaner because of the violation of the noise ordinance."

I wish we had some data. We are hoping that the Health Department will do some studies so that you will have a better idea and we can have a better idea for applicants in what makes sense in terms of a site plan to protect people."

MARNELL "The very nature of that is such that it is the amount of noise generated by whatever particular vacuum happens to be installed, and those could all be different. So therefore, it isn't distance sensitive, it is noise sensitive and we already have an ordinance that covers that, so I can't see the additional restrictions."

KROUT "I guess I would just say that when the data comes in, I think it will be interesting to see what it says. There are a lot of noises that occur in the city today that probably don't violate the noise ordinance but are considered disturbing to people. We just need more data."

WHEELER "Could staff refresh my memory on previous ones? What are the distances that we have approved previously on vacuums from residential?"

KNEBEL "The ones that we had at the last meeting we had a proposal for vacuums to be 5 feet from the property line. The motion that was passed was that they would be no closer than one-third of the distance from the property line where the residential was bordering it. I was thinking that that lot was about 200 feet deep. So that would be 60 to 70 feet from the property line."

WHEELER "I guess my question is have we ever put them within 35 feet of residential?"

KNEBEL "I don't have the history to be able to answer that question."

WHEELER "Well, I mean in the last few that you have done."

KROUT "I think in the case involving Rock Road, and if you want to ask the applicant that question, it would probably be appropriate. In the case of the Rock Road and the 37th Street case, I think that was probably closer than 70 feet. I think generally when we have the depth of the lot, what we try to do is encourage the vacuums to be on the other side of the wash structures from residential property. But this is a pretty shallow lot, and they have constraints compared to a lot of car wash sites, so that is their problem in this case, otherwise they might have been able to do that."

WHEELER "Their other option, as I understand it, would be to move the vacuums to the side bays, to the side parking stalls, which would limit them from 8 to 6."

KNEBEL "Well, you would be able to get 8 in if you limited the distance to 45 feet. If it was greater than that, they would have to reduce it to 6."

MICHAELIS "I think something to keep in mind here though, too is that this one has a lot more trees on it than most of them do, and they are offering to put them closer together. The trees are going to make a huge difference in the sound buffering. It has more impact than distance."

GAROFALO "Is there any other discussion? Okay, we have a motion to approve with the outlined conditions."

VOTE ON THE MOTION: The motion carried with 10 votes in favor (Lopez, Johnson, Michaelis, Warren, Marnell, Barfield, Warner, Garofalo, Platt and Hentzen) and 2 in opposition (Wheeler and Osborne-Howes). McKay abstained and Carraher was not present.

7. **Case No. Z-3353** – Bencor/Waco 13 c/o Ben Horton (Contract Purchaser); Simon and Albertina Esparaza, Glen L. and Earlene Miracle, J. Fred Hambright, Helen L. Luinstra Living Trust, Lee Greiving, and Kenneth R. and Bonnie J. Holmes (Applicants); Baughman Company PA c/o Russ Ewy (Agent) request zone change from "B" Multi-Family Residential to "LC" Limited Commercial on property described as:

Lots 1229 through 1233 odd inclusive on Waco Street together with Lots 1226 through 1246 even inclusive on Wichita Street (now Fairview Street) all in Lewellen's Addition, Wichita, Kansas. Generally located South of 13th Street North and east of Wichita.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant requests a zone change from "B" Multi-Family Residential to "LC" Limited Commercial on a 1.62 acre platted tract located south of 13th Street North and east of Waco. The applicant proposes to incorporate the existing commercial corner (developed with a rent-to-own center) with additional properties for redevelopment of the site as a new retail business. The site proposed for redevelopment is currently developed with several single-family residences, a temporary water line construction storage yard, and several vacant parcels.

The surrounding area is an urban neighborhood located approximately one mile north of downtown that is characterized by a mixture of pedestrian-oriented residential and commercial uses. Property west and north of the site is zoned "LC" Limited Commercial and is developed with a rent-to-own center, a jewelry store, a liquor store, a grocery store, a furniture store, and vehicle repair shops. Property south and east of the site is zoned "B" Multi-Family Residential and is developed primarily with single family residences interspersed with multi-family residential units.

The applicant submitted a preliminary site plan indicating a suburban style of vehicle-oriented commercial development with the parking located in the front and the building located toward the back of the site. The preliminary site plan also indicated a

dual drive thru window on the south side of the building with one access drive to both 13th Street North and Waco. The applicant is also proposing to vacate the alley located on the site and dedicate a connecting alley running east to Fairview as a part of the platting process.

Due to the urban character and the pedestrian orientation of the neighborhood and the site's close proximity to two historic districts and the downtown, planning staff is recommending that the zone change be approved subject to a Protective Overlay that provides for the Planning Director's review and approval of a site plan and building elevations. The purpose of this design review is to develop the site in an urban, pedestrian-oriented style with the building located as close as practicable to the street right-of-way and with parking in back of the building to promote pedestrian access to the building. In combination with the Protective Overlay, the regulations of the Unified Zoning Code, Landscape Ordinance, and Sign Code should sufficiently limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

CASE HISTORY: The site is in the Lewellen's Addition, which was platted July 5, 1887.

ADJACENT ZONING AND LAND USE:

NORTH: "LC"	Retail, General; Vehicle Repair, Limited
SOUTH: "B"	Single Family, Multi-Family
EAST: "B"	Single Family, Multi-Family
WEST: "LC"	Retail, General

PUBLIC SERVICES: The site has frontage to 13th Street North, a four-lane arterial with a left turn lane at Waco, and Waco, a four-lane arterial with a left turn lane at 13th Street North. Current traffic volumes are 18,000 vehicles per day on 13th Street North and 9,000 vehicles per day on Waco. The 2030 Transportation Plan estimates the volumes will increase to 22,000 vehicles per day on 13th Street North and 10,000 vehicles per day on Waco. Municipal services are currently provided to this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within one year and the following conditions of a Protective Overlay:

- A. Prior to issuance of a building permit, a site plan and building elevations shall be submitted for review and approval by the Director of Planning. The site plan shall locate the building no further than 10 feet from the street right-of-way lines of 13th Street North and Waco after required dedications. The architectural design of the building elevations shall include a "street" entrance and large display windows and shall utilize brick and other materials and details that are consistent with the era and styles of the neighborhood.
- B. No portable or off-site signs shall be permitted on the zoning lot.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is an urban neighborhood located approximately one mile north of downtown that is characterized by a mixture of pedestrian-oriented residential and commercial uses. Property west and north of the site is zoned "LC" Limited Commercial and is developed with a rent-to-own center, a jewelry store, a liquor store, a grocery store, a furniture store, and vehicle repair shops. Property south and east of the site is zoned "B" Multi-Family Residential and is developed primarily with single family residences interspersed with multi-family residential units.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "B" Multi-Family Residential which accommodates very high-density residential development and complementary land uses. The site is currently developed with several single-family residences, a temporary water line construction storage yard, and several vacant parcels. Two of the existing single family residences are in a declining state and exhibit housing code violations. The temporary construction storage yard and the vacant parcels were the site of four additional single family residences several decades ago, which have been demolished and not replaced, indicating that residential development may not be viable at this location. The site is also located near the arterial intersection of 13th Street North and Waco, which could make this site less desirable for residential use in the future.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the conditions of a Protective Overlay which would help ensure compatibility with the urban, pedestrian-oriented neighborhood in which the site is located. In combination with the Protective Overlay, the existing regulations of the Unified Zoning Code, Landscape Ordinance, and Sign Code should sufficiently limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located

adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

5. Impact of the proposed development on community facilities: Waco and 13th Street North should have sufficient capacity to handle the additional traffic generated by commercial development on the site. Other community facilities should not be adversely impacted.

KNEBEL "I am available for questions."

GAROFALO "Do you know what is planned for here?"

KNEBEL "It is a Walgreens."

GAROFALO "It is? I read all of this and I didn't get the impression that a Walgreens was certainly going to go in there."

KROUT "It could be some other use."

KNEBEL "Right. The elevations and the indications on those are of a Walgreens."

GAROFALO "I was curious as to the drive-through window."

WARREN "I will ask this of Marvin. Can we not condition the approval of this zoning onto that site plan and that use?"

KROUT "I think, whatever you do, you want to provide a reasonable range of uses."

WARREN "Oh, I understand."

KROUT "And don't forget that that corner is already zoned Limited Commercial."

WARREN "Right. I have a real problem, Mr. Chair, with this requirement. Walgreens is a big outfit. They obviously have planners who put these sites together and they have rationale behind that. It looks like they are going to make a tremendous investment here, and for us to decide that that building ought to be within 10 foot of the street, when in fact, that may be a strong deterrent to their economic value of that thing. We are looking at aesthetics and those guys are in there trying to figure out how they can make a profit out of this."

GAROFALO "Ray, why don't we hold up until we hear the thing and then have a discussion?"

WARREN "Well, we are talking about a requirement and I guess I am questioning that requirement."

MCKAY "I was going to question the setback, but I will wait until we get to the discussion."

OSBORNE-HOWES "I need to say that I have been contacted by the agent."

Most of the Commissioners said they had been contacted here.

HENTZEN "What difference does that make?"

MCKAY "You just have to divulge it."

HENTZEN "Who says?"

MCKAY "The rules and regulations of the Planning Commission."

HENTZEN "I would like to see that."

GAROFALO "Okay, are there any other questions?"

OSBORNE-HOWES "I was going to say something else on that, too. There was an attachment, but I did not get that site plan that you have shown."

KNEBEL "The site plan was not attached to your staff report."

OSBORNE-HOWES (Holding up papers) "But I did get this. Did everyone else get that?"

KNEBEL "Yes."

OSBORNE-HOWES "I guess part of me thought at first that that was part of what the applicant turned in."

KROUT "That is just an excerpt from a publication that we sent to you to help try to sensitize the Planning Commission as to why we think this idea of how to build commercial differently in some areas is worth looking at."

JOHNSON "Mr. Chair, I am presently working with an individual with a piece of property right across the street, even though I have no conflict of interest with this, I am going to step down from voting on this as it may appear that I do."

BARFIELD "Do I understand correctly that we are saying that this site might or might now be a Walgreen's?"

KROUT "I think you can let the applicant answer that question. Any time you are zoning property, there is a potential for anyone who has announced plans to back out, or they may build it as a Walgreens and a year from now it may be something else. You are always looking at property that can change use some day."

BARFIELD "I think you could perhaps be setting yourself up for deception. This is being presented as if we are going to approve this for the construction of a Walgreens, and if that is not the case, then I would have a little bit of a problem with that, myself."

KNEBEL "And that is why the staff report doesn't tie itself to any particular business, but refers to the architectural style of the building."

WARREN "But even then, we have been talking for 15 hours about infill. I think that building, whether it is a Walgreens or something else, looks to me like a good use of that land in terms of remodeling."

BARFIELD "If it was going to be a Walgreens, I would agree, but..."

GAROFALO "Let's hold up the discussion until after the hearing. We will hear from the applicant."

PHIL MEYER "I am with the Baughman Company, agent for the applicant. With me here today also is Doug Malone, who is also agent and realtor on this property. The contract purchaser, due to weather conditions, was unable to join us. They had planned to be here today and couldn't make it in."

On the handout you have that shows the building elevations, do you have the site plan attached to the back?"

Planning Commissioners answered yes here.

DOUG MALONE "My address is 150 North Market. I am going to let Phil do this, but in defense of Marvin, I asked him not to divulge who this was going to be, but it is going to be Walgreens."

BARFIELD "Thank you."

MEYER "As we start here, I would like to have everybody flip to the second page, which is actually the site plan. I just passed those around. I wasn't sure if you had them or not. That is why I didn't send them around earlier. As Doug has said, we are proposing to construct a Walgreens at this location. The site plan I am passing around to you is a site plan that has been approved by the Walgreens Corporation. These things are developed in a manner to where Bencor is the developer. They purchase, and put the deal together and they actually build the Walgreens and then they turn it over to Walgreens after the building is constructed and completed. I bring that up because we go through a long process of getting Bencor's approval and then going through Corporate Walgreens and getting their approval on site plans, and it is hard to make modifications and adjustments once we finally get something approved. It is not like we can just agree to switch a lot of things around today."

If you look at this specific site plan you will see that along 13th Street we are going to dedicate 10 foot of right-of-way when we plat this property. That forces us to push the building back a little bit. I am going to go through a series of items that are affecting this property and how we are trying to develop it. The second issue that popped up was an existing alley. There is a 16-foot alley that runs north and south right now that extends all the way up to 13th Street. We need to vacate that alley to do this development. To vacate that, we have to relocate what we call a 'T' alley out to the east. And in that 'T' alley, we have to make a radius, and you will see that it is a little bit wider at the west side and narrower at the east side. We need to make a radius there that will allow trash trucks and other vehicles to have turning movement to do that. That is just a City engineering requirement that if I vacate the north part of this alley and turn it into a 'T', I have to allow that turning movement. Even if they aren't using that alley for trash or other items today, I don't know that I can get out of that requirement."

We would love to vacate this entire alley. We first looked at it and looked at all of the numbers of properties and made the decision that we weren't going to try to vacate that alley. There are people that park their cars back there now. There are really no garages or anything, but there are houses that use that parking in the back. We just thought it was going to be difficult. We assume that a lot of them are probably leases, some of them are owned. There is a mixture of both, so we probably aren't going to get that alley vacated. So instead, we went and purchased an additional residential property right here to allow us to do the 'T' alley."

I think there are several people here to talk about this today, and we are more than willing to try to vacate that alley. I don't know that we can get that done, because to vacate it, we have to have every landowner agree to vacate it. It takes us about a 60-day process. Ourselves, we would love to get it vacated, so we are not opposed to trying to do that."

Walgreens really requires this development at this location. They understand that there are locations and there are Walgreens in other cities where they have development where the building sits right up on the right-of-way line. Here in Wichita, they can't get approval to do that urban scale Walgreens here through corporate office. They are standing on this site, looking across the

street, seeing the Dillons. It is not an urban style or scale development. There are other developments in Mid-Town, Quik-Trip and others that are developed with this style of development. We feel, and this is our biased opinion, that 85% to 90% of the people that come to this Walgreens are going to drive up to it. As you listen to some of the neighbors who may be in opposition to this, if we do this in urban scale, we are going to put the parking lot behind the building, which creates more noise, really more encumbrance on them than to back the building up to property line and do our parking street side. We can allow, and we have allowed a walkway through the parking lot, so if somebody is on the street, we will stripe a path to get them over to the building, through the parking lot and designate it as a walking area.

So, what we would like to do is to amend Item A in the staff report. We cannot get this thing developed with the building being more than 10-foot to the property line. We do have permission to offer you, and while we pass this elevation around to you, what we call a neighborhood designed Walgreens. With this Walgreens, you see all four building elevations. It is all brick material. It has some of the architectural character on the outside of the building. It is more residential in character. We can offer this to you today. You will have to ask Marvin if you can make it a condition, and you can probably select some of the materials and get close, but what we are offering you is this neighborhood approach or this neighborhood looking Walgreens with all brick material, pitched roofs over the entrances. There is some stone character on the south side. We are in agreement with staff comments on Item B. We would like to get this site developed at this location. Walgreens has looked extensively in the Mid-Town area. Maybe Doug can elaborate on that more, but this was one of the few sites they could put together and put the land together to make it happen. With that, I am going to open it up to any questions you might have unless Doug has something he would like to add."

HENTZEN "Does your application include that big two or three story house to the south? Can you go back to the aerial?"

KNEBEL "Are you talking about on Waco?"

HENTZEN "Yeah. I believe that house is boarded up now. I was up there the other day and I couldn't imagine anybody living in it."

MEYER "I am 90 per cent sure that the house you are talking about is in application."

HENTZEN "Yeah. Something needs to be done about that."

MEYER "There are a couple of houses that are in our area that are kind of dilapidated and we will be cleaning them up."

GAROFALO "Are there any other questions?"

MEYER "I met with one person to the south that is opposed to this. There are several conditions we have offered them to help ease their concern. I want to let you know that now. I will explain those to you in the rebuttal, when we look at the site, or if you want to know now, I can go over it."

OSBORNE-HOWES "On the Fairview side, on the east side, I guess maybe I should have gone back to the zoning map. Is there any kind of fencing that would have to be done there?"

MEYER "The Landscape Ordinance would go into effect there. There is no fencing required. We would really rather not fence that. I don't think that is going to be appealing to the neighborhood."

OSBORNE-HOWES "Or any landscaping because it looks like right across the street it is residential."

MEYER "Yeah, landscaping would be required with the Landscape Ordinance, and we would be willing to do landscaping."

OSBORNE-HOWES "I just don't see any landscaping. If we are going to approve a site plan, I would like to approve something that shows landscaping."

MEYER "Okay. Or, we can take the ordinance and the requirements. This site plan I am showing to you is the site plan that was approved by Corporate Walgreens and that is why I passed that out. We, to date, have not done the landscape plan. There will be a landscape plan done."

GAROFALO "If there are people here to speak in opposition, I think we will hear them first and you can, in rebuttal, refer to whatever they speak about. Is there anyone else to speak in favor of this application?"

KEN HOLMES "We have a four-plex right in the middle of this property, and I really came here today just to observe, but I decided to speak because I was surprised to hear that somebody might be in opposition."

We do not have quality businesses come to Mid-Town often enough and ask to be a part of our community. Wow. I wish we could have more people come and want to be a part of this solid community. The four-plex we have is an old building. It was probably built around the turn of the Century; was originally a house and was probably converted to apartment in World War II. Right now, my neighbor on every side is a vacant lot. To the north, to the south, and to the rear. The vacant lots are used for what people use vacant lots for. They are used to grow grass, high. Our neighbors really try to mow their lawns. I must give credit and not complain too much, but it is not like it is mowed twice a week, in the summertime. High grass will catch everything that blows. Another thing that vacant lots are used for is to drive across. If you drive across them enough, you

create a path where there is no grass. If you look at these vacant lots, you will find that at least one of them has quite a path for driving.

Another thing you can use vacant lots for is to store things. The vacant lot behind us perhaps is not a vacant lot at the moment because it is really being used. It has been chained up and a construction company in the neighborhood is storing their stuff. I have been to meetings where we have been talking about bringing people into the city and bringing them back to join Mid-Town, to join the community and a construction company with all of their rocks, Caterpillars and sand piles are not really the inviting site, and I presume that if a program like this doesn't go through, that the opportunity to store things will continue for quite a little while.

One thing the grass does is catch things that blow in. Our neighbors try to keep it clean, but we have a Rent-A-Center to the north where they sell things and put their boxes in the waste can, but it blows. If you have a vacant lot as a neighbor everywhere, nothing gets hidden in the back yard. You can see the back yard everywhere. At my house, if my back yard is messy, you can't see it because the neighbor's house blocks your view. So, this is an ideal place, I think, for development. I guess I would just close by saying that the meetings I have recently attended have talked about a trend scenario and a conservation plan. I think that Mid-Town is fortunate to have someone come to us and lay in our lap an idea that really fits the conservation plan.

We have other properties in the neighborhood. I would tell you that the four-plex that we have is never empty. It is right across the street from Dillons, and people love to live there because they can just walk across, get their groceries and a lot of other stuff and come back. But I believe that for a solid community, we need other reasons to have quality people come to our neighborhood and stay there, build homes there and improve the area. I think this idea would do it. Thank you very much."

PLATT "Could we get the aerial back up there. I would like to find out where he lives. Could you show us where you live?"

HOLMES "I am a landlord. I live at 2246 Columbine and we have the four-plex that has been in the picture several times. Run the slides. It is 1344 North Waco. It is our four-plex. A cream colored building with a green roof."

MARNELL "If this type of facility was developed at this location, since you mentioned the infill in the area, do you think this would encourage landlords similar to yourself who have land in this area to develop additional rental property in that area?"

HOLMES "We have other rental property in the area, not adjacent, but at 21st and Arkansas and 11th and Waco, and other places. I think this type of thing has to happen. It is like a domino effect. One good thing happens and it causes more. For instance, I am always glad when one of our tenants leaves to buy a house because I know good things are happening to him, and if good things are happening to him, more good things will follow. So, I view this as a good thing and if it happens, chances are that more good things will follow."

LOPEZ "Does your rental property front Waco?"

HOLMES "Yes, my rental property fronts Waco. It is a Waco address."

LOPEZ "Look at the aerial there. At the corner of 13th and Waco is the Rent-A-Center. See on the aerial?"

HOLMES "That's right. The Rent-A-Center is right at the corner."

LOPEZ "Are you the first property south of that?"

HOLMES "We are the first property south, and actually, we are the only property south."

GAROFALO "Are there any other questions? Thank you. Is there anyone else to speak in support? Is there anyone here to speak in opposition?"

CHERYL TURNER HAND "I know some of you here in the room. Normally I don't have a lot of trouble speaking, for those of you who know me. Today is a little harder because this is very personal and hits me in my home.

Mr. Holmes talked about a good thing happening. Well, he doesn't live there. And they are not buying his home to where he has to move his home. He has an investment and he is going to reap a reward in his investment, so I think we have very different perspectives about this development.

To give you some perspective differing from where his property is and where I am, I am not purchased; I am just going to live next to it. That is a very different perspective than he has. I have a number of concerns about the site plan as it is presented. If you will look at your drawing, on the very bottom of it, where it says 'relocated alley', that little dotted line there. That is actually my property line. So we are talking about an alleyway not only being at the back of my property, but right outside my kitchen window. And then beyond the alley they are proposing will be some type of fencing, whatever that would be. This doesn't seem appealing to me at all. I am not sure how that is going to help me, and I don't see that it is necessarily a good thing from where I am sitting and every day will be looking outside of my windows.

Also the proposal has the drive-through window, if you will look at your drawing, right across the fence from my house, which will have idling cars there with fumes going up to my bedroom window. I have a two-story building. It is going to be a little hard

in any near future to build trees that are going to give us much privacy in our upstairs windows from this entire development. I am not sure that I could conceive of that happening any time soon. It takes a while for mature trees to develop.

I have a number of suggestions or proposals. If this is something, like I said, I am not against new businesses, I certainly think that our inner city is going to have to have businesses as well as homes to thrive and continue. I have been there over 25 years, I believe in gentrification. We have spent a lot of money on rehabbing the house. It needs some more rehabbing, and before I go to the bank to talk about looking about getting a loan to have the Mennonites to redo my porch, I am definitely going to see where this goes first and whether I am going to stay there or whether I will try to move out of the area. This is not enticing me to stay there, and we have been there a long time.

I work at the downtown YMCA, and it is within walking distance. My husband walks to work every day. He is a Lieutenant at the Sedgwick County jail. Our children go to neighborhood schools. We are invested in this area. My life is invested, not just not my money. I have a number of suggestions. I did speak with Doug Malone and they made a couple of suggestions.

First of all, I would rather that it didn't go in there, but let's say you all, in the wisdom that this body would maybe summon, would decide that that is a good location for a Walgreens. Some of the things that would make it more livable for my particular home, and like I said, I want to make you know that I am looking at it from my perspective, and not necessarily the good of the community. It is a little hard to do that when I am so close to this. It would be lovely if that alley was totally vacated. If it cannot be vacated, I would love for it to go the other way, instead of onto Fairview, on to Waco. That wouldn't affect me as much. I would also love for the drive-through to be positioned on Waco or 13th Street. That also would lessen the impact on my living arrangements. Those are just a couple of things that would help. Additional screening, maybe a masonry wall, which was suggested; trees, those types of things. Those are some concerns. It is just extremely close.

My house will soon be 100 years old. The lots are not that big. My house takes up most of the lot. From the actual building of my home to my property line, which is that dotted line, we are talking just a little bit more than a single driveway width. That gives you an idea of how close we are talking that I will be to the edge of this development and how closely it will impact my living. We also have an above ground swimming pool and a elevated deck, so it is hard for me to envision how we would have much privacy in our back yard with an alley going clear around. I am just trying tell you how my life style can change, based on this. We talk about the noise and all of those things, and being in an urban area, I have learned to live with a number of things."

GAROFALO "Your five minutes is up. Are you about finished?"

TURNER HAND "I was just going to share with you that I am used to a lot of noise. In our multi-cultural neighborhood, there is a lot of noise. We have the Dillons and we used to have a Quik-Trip across the street, those types of things. I think we are fairly tolerant. It is not like I am totally intolerant to a lot of things. That is what I was trying to share."

GAROFALO "Thank you. Are there any questions of the speaker?"

BARFIELD "Ma'am, are you saying that you don't want any development or are you opposed to the site plan?"

TURNER HAND "I am saying that it is hard for me to look at this, at this point as a community project. I have a degree in public administration, and I know that there are community goods and right now, the area right there is not perfect. There have been a lot of houses that have burned and are no longer there. They have not been infilled. Part of the reason is that some of the prices that people have asked because they have been anticipating a change to 'LC', so the lots have been expensive and it is unreasonable to put a infill home in there, based on the price of the lot. Because I have tried purchasing them myself to extend my area. I would like to have a garage, maybe a garden. Those types of things. So we have looked into purchasing those lots when they became available. It is not that I am against any kind of development, but I do not like the idea of 'LC' encroaching into my neighborhood even more. Right now, it is on 13th and in the time I have lived there, rezoning has come up before. We were told, at that time, that 'LC' would be limited to 13th and Waco and that it would not encroach into the neighborhood and that hopefully we would have infill in those homes. But it hasn't happened, I realize that. Some of the things are true. Right now we have a construction area, and we have had for almost going on two years now. That is kind of the headquarters for putting in the new water lines downtown. That is one of the places they have all of that equipment. That goes up and down on my street, which is not a positive thing, either."

BARFIELD "I am going to ask you what was asked of Mr. Holmes. If this were allowed and the Walgreens was constructed, do you feel that it would enhance the opportunity to have further infill occur in that area?"

TURNER HAND "Well, actually, from my perspective, no. Because the thing is if you start building in Mid-Town, unless you have some assurances over the long-haul, that you are not going to get zoned out of existence, it is real hard to rationalize spending money putting in homes that something like this wouldn't happen. Say if someone had spent money infilling those homes. One person or two people. Their homes would be gone now. That area would be changed. And like I said, I might be celebrating this also if my home was purchased and I was moving somewhere else. But I am not. That is not the situation as it is right now. I am still there."

GAROFALO "Are there any other questions? Okay. Have you had conversations with the applicant or agent?"

TURNER HAND "We talked a little bit today, yes."

GAROFALO "Just today?"

TURNER HAND "Uh huh. Because I didn't know who it was before."

GAROFALO "Okay, thank you. Is there anyone else to speak in opposition?"

STEVE HAND "Cheryl is my wife. We bought the place when I was 22 years old. We were tired of landlords and stuff, so back in 1973 we bought the home there. I have been kind of possessive of it. We have a 7-year-old son and a 13-year-old daughter now, and I am a little worried about the alley being right there next to our property line, where the kids can play. They are saying they need trash trucks rolling through there and stuff and if there could be an arrangement to where the alley wouldn't go past our property but maybe out to Waco Street instead of dumping onto Fairview, it could be a livable agreement.

I really don't mind having a Walgreens there. The homes that they are taking out are kind of small and rather heavily occupied. The home that Commissioner Hentzen was talking about is the home that Mr. Holmes was mentioning there. And maybe that is perceived as a good thing to get rid of that one, but moving all of that stuff right beside us isn't palatable to me.

Although I am just a citizen with very little rights to push against something like this. If there could just be some type of arrangement where we wouldn't get an alley right there going past our house, it would be nice. I suspect that if it had to do with any one of you, putting an urban alley adjoining your home, you probably would not vote for it. But since it doesn't effect you, it doesn't matter. But there is an option to the alley arrangement there. If they would have it go out onto Waco Street where their drive-through is planned instead of going out right here where my house is, it would go out right here (indicating), through where their drive-through is already planned, according to the site plan. It would alleviate much of the problem. I wouldn't have any real complaint about the place.

You were worried about having a car wash and talking about those hours. They are guaranteeing you that that thing is going to be open 24 hours a day, thirty feet from my house. The car was offensive in a little higher-priced neighborhood for a couple of those reasons, but in my neighborhood it is not bad having a trash truck that actually drives through within one inch of my property line and having a drive-through 30 feet away that is there 24 hours a day. So, thanks."

GAROFALO "Are there any questions?"

LOPEZ "The applicant made a comment that they would be interested in seeing the alley completely vacated. Would you work hand in hand with them to try to get a petition to vacate the alley?"

HAND "I would. That would be great. I think there is probably neighborhood opposition for that because the people park their cars in their yard. Whether that is actually legal or not to do, I don't know, but that is where they park a bunch of them. Some are up on blocks, and some are actually running. That would be wonderful if that whole alley would be vacated."

LOPEZ "If they vacated the alley then, to the north of your property, and working with the applicant to do the screening that you would need."

HAND "Right now, their proposal to screen it actually helps them because they screen out the alley and screen it onto where it is right into my property. Their screening isn't actually insulating my house from it."

GAROFALO "Are there any questions? Okay, thank you. Is there anyone else to speak in opposition? Okay. Okay, The applicant has two minutes for rebuttal."

MEYER "I will keep this brief to keep it in two minutes, so feel free to ask any questions you may need to after we are done. We have no opposition to trying to vacate the alley. We would like the alley vacated. What I can't have is a motion that requires us to vacate the alley to get the zoning approved at the site plan, but we are willing and will stand here today and tell you that we will spend the money to do the ownership list and the legwork to try to vacate the alley. We will get the process rolling. If we can get all of the signatures, we will file that. That is a better deal for everybody and we have no opposition to doing that. So I am willing to try to do it.

On the location of the alley, we can take the alley either direction, to Fairview or Waco. If I turned it to Waco, you are going to have the property owner to the south coming in, telling you 'hey, I don't want it turned that direction'. If it goes this way, No. 1, we were able to get this property under contract, and No. 2, we felt this was a better location to turn the alley to. It is just the neighbors in here that are using this alley and Waco carries more traffic and we don't want to be dumping more traffic out onto Waco when we can put it out onto the neighborhood street.

It does get tied to their property, I won't deny that. I won't tell you that is not true. What we have offered to do to help ease their concern is No. 1, the fence all the way along our south property line, we are willing to make that a masonry wall rather than a cedar fence. We will be willing to go to 8 feet. We will do an 8-foot masonry wall. We are more than willing to do some landscaping along the back. We think the masonry wall will take care of the drive-through visual. The second floor of their house they are concerned about, we will be willing to double the landscape ordinance just to come up with a number of which required when a commercial property is adjacent to a residential property.

I am going to run out of time here, so I am either going to either need an extension or turn this into question and answers."

GAROFALO "Do you need another minute?"

MOTION: That the speaker's time be extended for one minute.

GAROFALO moved, **BARFIELD** seconded the motion, and it carried unanimously (12-0).

MEYER "So we are more than willing to offer some landscaping back here and we will work with the Hands on what that landscaping is. It can be a combination of evergreens and shade trees. I am proposing that they probably need some shade trees to screen up to the second story. The fence takes care of the first story and their back yard. I think an 8-foot masonry wall will take care of that. And that wall will be continuous. We will have no access to the alley. None of the patrons here will be exiting onto that alley.

I guess we can discuss whether we need to leave a walk-through in the wall or not. We would propose that it not be there, but we are not opposed to having it. We would be willing to meet with them and see if there is something we can do on their property. We can put up a cedar fence for them or we can add some additional landscaping on their property. I have told them, I know the Planning Commission cannot make that a condition, but I am just telling you that we are willing to meet with them and try to make that amend. With that, I am going to go ahead and turn this over to questions and answers, for myself or for Doug Malone."

OSBORNE-HOWES "What about the location of the drive-through window. Have you thought about where that might be? Is there any possibility of putting that somewhere else?"

MEYER "No, and that is why I went through my scenario when I first got up here about how this thing is processing through and we are going to Corporate Walgreens for approval. Their architectural site plans, that is the location where that drive-through has to be in relationship to the architecture inside and the floor plan and the pharmacy and where the pharmacists work. I do not have permission today to change the location of that. And I am not sure we could change the location of that, even if we went through Corporate. We could turn the building, but I don't know if that achieves really the end result we are looking for, but I can't change that site plan today."

OSBORNE-HOWES "I understand that. But I also know that this is a brand-new concept that they are coming out with. Here in Wichita it is, right?"

MEYER "Well, they are new to Wichita."

OSBORNE-HOWES "I'm sorry, I shouldn't presume. This is one of their larger stores that they now have been talking about. You know, we are not approving a Walgreens here today, we are just approving zoning."

MEYER "LC zoning."

OSBORNE-HOWES "And I understand that you might not be able to do that today, but I guess I am concerned that you have a drive-through window so close to residential."

MEYER "I am here to tell you that I can't change it today. The odds are that I probably couldn't get it changed. I don't want to disillusion you. I am not saying that we are not willing to try or to go ask, but I doubt if I get it changed if we go ask. We can explore that if you would like. I cannot give you the numbers on the amount of traffic that uses a drive-through at a Walgreens like this.

I am changing the subject on you a little bit, but I can offer you the architectural character that we have done, and I can offer you some nice landscape screening on the back."

OSBORNE-HOWES "I understand that. I am just concerned about the drive-through."

BARFIELD "Is this building, the materials and the design, is this consistent with what Walgreens is doing in other areas like Houston, St. Louis?"

MEYER "No, sir. This is a special design."

DOUG MALONE (From audience) "For the record, I am going to show these member what a typical Walgreens looks like. You will see this at 21st and Webb, and that is not what is on the table today."

BARFIELD "You mentioned earlier that you were not able to, in Wichita, get the urban design. Is that the design you are talking about?"

MEYER "Yes. Walgreens is not willing to go to the urban design, and when I say that, moving their building up to the property line here in Wichita, in this market. They are doing their best to locate these Walgreens throughout the entire city. This is one of the few locations we have been able to put a Mid-Town location together. That is the bottom line. I don't want to be harsh about it, but that is it. They are not willing to move that building up to the property line. I don't know if we are going to be able to put together another Mid-Town site to house Walgreens."

WARREN "I know that we are all sensitive to the concerns that the folks here had that just spoke. I certainly am. But I felt like maybe their major concern was that alley. This might be something that staff is going to have to answer, and then I would like to have you comment.

Is it possible, through some kind of a mutual agreement between the landowner and the City to have an alley terminate on private property so that that alley could go out onto that parking lot?"

KROUT "Yes. We have done it downtown for the Carlton School."

WARREN "Then assuming that that alley isn't some kind of a major thoroughfare, would it be permissible, do you think, for your people that you represent to allow that alley to terminate there so that people could come out through your parking lot to exit?"

MEYER "Yeah, if we can get rid of the 'T' alley, we are more than willing to do that. If it ties into our property or dead-ends at our property either one, we are okay with that. We can offer the Hands one nice landscape buffer if I am not using that south property for alley right-of-way."

WARREN "And as I understand it then, you would probably drop the requirement there for the relocated alley then, and just let them go on into your parking lot?"

MEYER "I am okay with that."

MALONE "Mr. Warren, I think it is probably going to be difficult for them to have that alley come into their lot, only because of access problems. I think they are willing to spend the time, the energy and the moneys to vacate that alley, assuming we can get all of the cooperation."

WARREN "Assuming that was the only way you could get approval, though, and until such time as you may successfully get that alley extinguished, you might consider, then, allowing that to terminate into your parking lot."

MALONE "We can discuss that with them."

MCKAY "I guess I have a question. Phil, you offered to put a fence up on the north property line of the folks that were in opposition. Have you asked them about that?"

MEYER "I have. I think they are concerned and they probably need to speak to it themselves, but what we were going to do to screen their second story."

MCKAY "You have offered to go up and landscape it to take care of the second story. I guess where I am coming from, you have a configuration here of a 20-foot relocated alley, but you have some excess ground on the north side of your fence."

MEYER "Yes."

MCKAY "If that fence location would go to the north, and I am going to try to use your curblin as your fence location, and then put your landscaping on that area outside the fence?"

MEYER "Yes, we can do that."

MCKAY "It is not narrowing down that alleyway so much, so your landscaping would be south of the fence. In other words, your fence would move north whatever that distance is to follow the curblin and then do your landscaping in that area south of the fence, which you said you would double it, which should take care of it and really give them kind of a park atmosphere."

MEYER "We can do that. You are on the same wave link as Mr. Malone. You matched his sketch he just delivered to me. That is not a problem."

WARREN "Is this ten foot out here going to be a contingent dedication?"

MEYER "No, that is an outright dedication. And with that 10 foot, this site is so tight, and I really didn't go into that earlier, but you will notice that our parking lot sits right on the property line after I plat it. I am going to dedicate 10 feet. The City is willing to allow us to do our screening for the parking lot on the right-of-way. That is why that sits right on the right-of-way. Then, you will notice that I am parking lot to building sidewalk to building to drive on back. It is as condensed as we can possibly make it."

GAROFALO "Are there any other questions?"

MEYER "To go back to what Commissioner Warren was saying a minute ago, it depends on how the Planning Commission looks at this, but if this alley, and I don't know if we can do this today, or if engineering has to approve it, but if this alley came up here and my wall came along and turned and then I had a 90 degree turn into our parking lot so that it just doesn't dead straight in, but it allows the opportunity for somebody to come into that alley to get out by turning onto our lot. We could probably do something like that."

OSBORNE-HOWES "Can I see what you are saying. Can you explain that to me?"

MEYER "If you come up that alley, we got rid of this alley dedication, we can run the wall here and the wall here and then just turn it on to our parking lot. So there is a 90 degree turn there to get onto their lot."

LOPEZ "If you are not able to get the alley vacated, you said there was a possibility to run the alley to the west out onto Waco?"

MEYER "No, we don't have that possibility. I said when we first started we had the option of going either west or east. We were able to put the piece of property under contract that allowed it to go east. We weren't to the west. I think my comment was that even if we had been able to do it to the west, you would have had a different property owner in here with the concern.

From my opinion, as biased as it may be, you are better off turning the alley to the east so that you are not dumping it out onto Waco, which is a heavier traveled road right-of-way."

WARREN "If we provided a right-turn only as your latest suggestion, that would probably prohibit trash trucks, wouldn't it? That probably would be advantageous."

MEYER "It would be. I don't know this, but I am told by the Hands that trash trucks really aren't using that alley now, but City Engineering requires me to allow a turning motion on a 'T' alley that allows a trash truck, or other trucks to turn."

WARREN "Are you suggesting that maybe a waiver might be in order for that requirement and you would go ahead and do a full right-hand turn."

MEYER "I need to turn to Marvin and see if we can even waive a requirement like that. Can the Planning Commission waive that as part of a zone change?"

KROUT "I don't think the Planning Commission can. It would have to be the Traffic Engineer."

MEYER "We would gladly take your recommendation to the Traffic Engineer."

GAROFALO "Are there any other questions? Okay, thank you. Okay, it is back to the Commission."

OSBORNE-HOWES "First, I would like to thank Mr. Warren for that idea. (Laughter) Well, I don't often agree with him. One of the thoughts I had when I was looking at this is that one of my very first memories is my Mother walking me to that intersection. So when I first saw this and saw what was provided to us with the idea of this urban giant, I thought it was a great idea. But the truth of it is, at that intersection, you do have Dillons with the parking lot in the front, you do have the old Quik-Trip and the parking lot is in the front. It is not the 1940s anymore. I really support the concept of developing these kinds of things in the Mid-Town area, but I don't know that one building can do that and make that work. I am so familiar with that intersection, having lived around there for so many years, but I would suspect that most of the traffic is indeed by car, and I don't know that this would change it. I do like their drawings, in that I think it does look good and it has to be of benefit for the area, especially for what is north of the area. I think that would be good infill. So I would hate to vote against something like that.

I am concerned about the drive-through. I would like to see it moved, if at all possible, and at least ask them to take that back. I do like the idea of having the alley go through the private property, and if it puts the onus on them to try to alley vacated.

I don't know the likelihood of getting the alley vacated because I am guessing a lot of that property, that is the only place they can park. They don't have parking out front, so I am guessing some one or two of those property owners would say no. I do appreciate the additional landscaping that they talked about and the concrete fence rather than a cedar fence on the northeast side. So I guess I am feeling very favorable about it in general, and I would make a motion, but it might be a little early to do that."

MCKAY "This is unusual. To me we have two solutions to the alley problem. One is to die it off of their property, or to leave it basically like it is and move the fence up and landscape that. I guess my question is, to the people to the south, what is more palatable to you?"

HAND (From the audience) "I would like to see the alley go into their parking lot."

MCKAY "Okay. That answers my question. If they do this, that means that the fence will go on their north property line, correct? Is that what you understand, Phil? If the alley dies off, that fence relocation goes to their north property line or your south property line?"

MARNELL "John, I understood that to be that curb line was what we were talking about, which would put a buffer between the fence and their property, and the landscaping would be there."

MEYER "Why don't we do this? See where the 20-foot alley is now? Why don't I start at Fairview and either at that 20-foot marker, or you can take it up to 30, run that wall straight west to the 16-foot alley."

MCKAY "But north or south of that?"

MEYER "Let's just take it at the 20-foot mark, run it due west 20 feet. That leaves a 20-foot landscape buffer on the south side of the wall that we can landscape on. We will let the alley tie into the back of our parking lot with a 90."

MCKAY "You are talking about the north side of that 20 feet?"

MEYER "Yes. I'm sorry, yes."

MCKAY "So in essence, for those folks you will landscape the south side of that 20 feet between their property and your property."

MEYER "Right. And I will just take that wall that is shown right there and just run it straight."

WARREN "And you will provide for the 20-foot buffer on the south side?"

MALONE "Let me qualify something. I would rather keep the wall there and give the Hands a landscape buffering and an additional fence per private agreement. I really would rather have anyone who is using the alley stay on the alley."

MCKAY "So you are going to move the 20 feet to the north?"

MALONE (Indicating) "Yes, to here."

MEYER "I think what Doug is wanting me to do is an old-fashioned 'L' alley where you come right up and hang a 90 and we do that 20 feet north of their line."

GAROFALO "Did we have a site plan slide? Let's use it. We are getting rather confused here."

MEYER "Okay, we have two choices. Here is Mr. Malone is asking me to get approved. See where the alley is right now? Take this line right here on the wall and make that the south line of the alley. Come up 20 feet and do an 'L' shaped alley that leaves a 20-foot buffer between the Hands' property and the south line of the alley.

The other choice is to put the wall at that 20-foot line and not make that an alley, just have the alley tie right into the Walgreens parking lot. Doug is very concerned, and I don't disagree with him that we may have a problem getting that approved by Walgreens to have the alley tie into their lot.

What I need from you is either way, it doesn't matter which way, I am coming up here and I have to turn that alley at a 90 degree angle, which does not meet subdivision regulations. The Planning Commission has the right to waive that when I plat it, but I am going to have to have the Traffic Engineer concurrence."

MCKAY "Phil, as you are coming up north and you are turning right, and you are giving the 20 feet, I think you are going to have to give a radius on the back part of that 20 feet to make some kind of a turn. If you don't, trucks are going to be running, if any trucks come in there, that 20 feet to the north is going to be awfully tough for that. So there will have to be a radius on the back side of that 20 feet."

MEYER "That is fine with us."

WARREN "The main thing I want to get clear though, is what you are saying is that where you are showing a relocated alley now would be a landscape buffer, irrespective of how else we design that alley?"

MEYER "Yes. But I have to be able to get the alley requirement changed. I can pass around my sketch what I am talking about if that will help, to make sure we are all in agreement."

LOPEZ "This is one option. Are you going to pursue the first option of just getting the alley vacated? That would rectify a lot of the problems."

MEYER "We are more than willing to do that. I made that offer if the Planning Commission would like us to do that. What I don't want is for you to make that a requirement that I get it done. You could make it a requirement that I file an application. It may be incomplete. I will work with the Hands the best I can to get all of the signatures."

MICHAELIS "Based on what has been said here today, that isn't going to happen."

MEYER "That is the conclusion we came to when we first started this project that it probably wouldn't happen, but we didn't try it."

GAROFALO "Would you be opposed to deferring this for a little bit so that you could work it out with the Traffic Engineer and the residents to the south?"

MEYER "I will leave that to the Planning Commission's discretion. We typically would not like to defer it, but if you think that is best, we are not going to adamantly oppose that."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood): The surrounding area is an urban neighborhood located approximately one mile north of downtown that is characterized by a mixture of pedestrian-oriented residential and commercial uses. Property west and north of the site is zoned "LC" Limited

Commercial and is developed with a rent-to-own center, a jewelry store, a liquor store, a grocery store, a furniture store, and vehicle repair shops. Property south and east of the site is zoned "B" Multi-Family Residential and is developed primarily with single family residences interspersed with multi-family residential units. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "B" Multi-Family Residential which accommodates very high-density residential development and complementary land uses. The site is currently developed with several single-family residences, a temporary water line construction storage yard, and several vacant parcels. Two of the existing single family residences are in a declining state and exhibit housing code violations. The temporary construction storage yard and the vacant parcels were the site of four additional single family residences several decades ago, which have been demolished and not replaced, indicating that residential development may not be viable at this location. The site is also located near the arterial intersection of 13th Street North and Waco, which could make this site less desirable for residential use in the future. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the conditions of a Protective Overlay which would help ensure compatibility with the urban, pedestrian-oriented neighborhood in which the site is located. In combination with the Protective Overlay, the existing regulations of the Unified Zoning Code, Landscape Ordinance, and Sign Code should sufficiently limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Impact of the proposed development on community facilities: Waco and 13th Street North should have sufficient capacity to handle the additional traffic generated by commercial development on the site. Other community facilities should not be adversely impacted.) I move that we recommend to the governing body that the request be approved, subject platting within one year and the following conditions of a Protective Overlay:

1. An 8 foot high masonry wall shall be constructed along the south property line west of the existing alley between Waco and Fairview and no less than 20 feet north of the south property line east of the existing alley between Waco and Fairview.
2. The applicant shall submit a landscape plan for approval by the Planning Director, prior to issuance of a building permit, that meets the ordinance's requirements and, additionally, provides twice the amount of landscaping required by the ordinance south of the masonry wall on the east side of the alley between Waco and Fairview.
3. The site shall be developed in general conformance with the approved building elevations.
4. Prior to issuance of a building permit, a site plan shall be submitted for review and approval by the Director of Planning and the Traffic Engineer. The site plan shall indicate the manner in which traffic from the existing alley between Waco and Fairview shall be provided ingress and egress through the site with either an access easement or a dedicated alley north of the required masonry wall. Alternatively, the existing alley between Waco and Fairview shall be vacated between 12th Street North and 13th Street North.
5. No portable or off-site signs shall be permitted on the zoning lot.

MICHAELIS moved.

MCKAY "You are going to have to also request to change the rules to be able to drive this alley onto private property."

MICHAELIS "From what I have been told, we have the power to do that as long as that radius conforms to what is required for the truck to turn to get out of there."

MEYER "Mr. Malone just made another suggestion. This doesn't have to be part of your requirement, but if the Hands are willing to accept it, we are more than willing to just deed them that 20 foot when we get done. We will landscape it, and if they want it, we will give it to them."

MICHAELIS "I think you are being extremely generous. I really do. You are going way above and beyond."

OSBORNE-HOWES seconded the motion.

OSBORNE-HOWES "Can I double check? He also talked about a concrete fence rather than a cedar fence on that side. Didn't you say that? And that you would add the landscaping."

MEYER "We will double the landscape buffer for adjacent to residential."

KNEBEL "I also want to ask, on deleting Item A, you mentioned the site plan. I wasn't sure if you wanted to delete the whole Item A or just the site plan portion and not the architectural and building elevation portion."

MICHAELIS "I would prefer just deleting the whole item. We have this here, and to me that is good enough."

KNEBEL "Okay, that is not a binding offer, that is just a conceptual indication that that is what they are willing to do."

MICHAELIS "We are really doing a zone change, and I don't see taking the zone change and tying it into architectural."

MCKAY "Don't they have to replat this?"

KNEBEL "Yes."

MCKAY "Okay, that will take care of the architectural."

KROUT "If you think that anything having to do with architecture is necessary and you think they are appropriate, this is the time, as part of the zoning approval, not as part of the platting process, to be asking for them."

OSBORNE-HOWES "I thought we put that in."

KROUT "Well, someone was suggesting that it is not appropriate."

OSBORNE-HOWES "They offered it. Did you make that part of your motion?"

MICHAELIS "I eliminated Item A."

OSBORNE-HOWES "Totally?"

MICHAELIS "I don't think it is our job to do architectural control requirements at this point in time. We are approving a zoning change and that is what I am looking at."

OSBORNE-HOWES "But is this included?"

KROUT "No. Not according to the motion."

OSBORNE-HOWES "Well, then I can't....they offered it."

MICHAELIS "Well, if they offered it, that is fine. What I am doing is taking out item A here. If they want to submit this, then I am fine with that."

OSBORNE-HOWES "Does that do it, Marvin?"

KROUT "So it will be subject to the site plan as revised, and to the elevations as submitted?"

MICHAELIS "Right."

KROUT "Yeah, I think that is right."

OSBORNE-HOWES "Okay."

PLATT "I guess I am a minority of one, but I am very disappointed in the direction we are going here. It seems to me that we have recently sat through three public hearings in which we heard a great many people comment on the fact that they thought that our approach to Planning was to pay no attention to all of the problems of the older portions of the City where the whole subject of infilling is a very problem."

It seems to me that we had a marvelous opportunity to respond to that today and I think we have blown it. This would be a great example if we could have worked something out and gone to the City and said 'we heard you, we are going to give you an example of how infill ought to be done'. I think we have turned out back on it with what we have here. This is a perfect example of the way we would do an intersection out west in Wichita someplace. The typical plopping down of a building with parking all around it. It was very insensitive to the neighborhood. It seems to me that here was a chance we had, and we didn't take advantage of it. I am disappointed."

HENTZEN "George, does that mean you are in favor of the motion, or opposed to it?"

PLATT "I guess I will vote against it, but my feeling is broader than that today. I feel that we have missed our opportunity."

HENTZEN "I can tell you that I have been thinking along the line of what you have been saying that for hours and hours we listened to 'we need to do something in the infill areas'. I remember suggesting that it is not only housing but also the little business places. That is my point. This presented us with a good plan with a sound investment, and we sit here for hours nitpicking it around. If I was a developer or an investor, I wouldn't come up here and get nit-picked apart on how many

windows you can have, are you going to put the vacuums over here, and whatever. I'm telling you that we are sick if that is the attitude we are going to take. It is too late. I am going to vote for the motion."

WHEELER "I will just make this brief. I will be supporting the motion because I think this is a wonderful opportunity for redevelopment in Mid-Town and I think that the architectural style and a lot of elements of the site plan are very appropriate."

VOTE ON THE MOTION: The motion carried with 11 votes in favor and 1 in opposition (Platt). Johnson abstained and Carraher was not present.

8. **Case No. CU-562** – Kenneth J. Cain (Owner/Applicant); P.E.C., PA c/o Gary Wiley (Agent) request a Conditional Use to allow sand and gravel extraction on property described as:

The East Half of the Southeast of Section 28, Township 29 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, except the East 140 feet and the South 550 feet thereof. Generally located north of 111th Street South and west of Hydraulic.

SCOTT KNEBEL, Planning Staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting a Conditional Use to allow sand and gravel extraction on a 60.3 acre unplatted tract located north of 111th Street South and west of Hydraulic. The subject property is zoned "RR" Rural Residential.

The attached site plan shows that the proposed sand and gravel extraction operation would create a 40.2 acre lake. The operational plan shows a fence east and south of the operation, with the remainder of the site to be enclosed by an existing hedgerow. Storage of equipment and material would not be permitted within 100 feet of Hydraulic or 50 feet of any property line. The redevelopment plan shows that the portion of the site east of the lake is proposed to be platted as 11 residential lots along a frontage road to Hydraulic.

The subject property is within a zone likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Also, the most recent information pertaining to wetlands from the Sedgwick County Soil Conservation District and Soil Survey of Sedgwick County indicates that the site does not contain soil commonly associated with wetlands.

All of the property surrounding the site is zoned "RR" Rural Residential and is used for agriculture with farm-related single family residences. The Cowskin Creek and the Kansas Turnpike are located west of the property. The nearest residences not owned by the applicant are located approximately 300 feet north and 600 feet south of the site.

CASE HISTORY: The site is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "RR"	Agriculture
SOUTH: "RR"	Agriculture
EAST: "RR"	Agriculture
WEST: "RR"	Agriculture

PUBLIC SERVICES: This site has access to Hydraulic, a two-lane paved section line road. Hydraulic has current traffic volumes of 725. The 2030 Transportation Plan estimates that these volumes will increase to 1,422. Municipal services are not available to serve this site. On-site water and sewer services will be required to serve this site due to its remote location.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Agriculture" (20 acre minimum lot size), which accommodates agricultural operations as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural uses. In the "Agriculture" category, subdivision into multiple lots less than 20 acres, as proposed in the redevelopment plan, generally should be developed through cluster provisions that reserve land for agricultural uses or open space, which is proposed by the applicant with 11 single family lots on 60.3 acre site with a 40.2 acre lake reserved for open space.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The applicant shall submit an operational plan for the area to be excavated. The extraction of sand on this site shall proceed in accordance with the operational plan approved by the MAPC. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan.
2. In order to assist in the enforcement of the operational plan for this extraction use, the applicant shall have a copy of the approved operational plan posted in the sand extraction office.
3. Adjacent to the east and south property lines of the application area, as indicated on the approved operational plan, a minimum 60-inch-high fence shall be constructed prior to the beginning of any extraction operation. The fence

along the east and south property lines and the existing hedge row along the north, west, and south property lines shall be maintained at the locations depicted on the approved operational plan. Said fence shall be placed on steel posts, which are not less than 7 feet tall. The posts shall not be set more than 16 feet apart.

The fence shall be a minimum height of 60 inches and shall be of the following types of construction:

- A. A 48-inch-high or higher chain link fence with 3 or more strands of barbed wire; or
- B. A 48-inch-high solid metal or solid masonry fence with 3 or more strands of barbed wire; or
- C. A 48-inch-high or higher wood fence which may have cracks or openings not in excess of 5% of the area of such fence, with 3 or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gate at an angle not to exceed 160° facing away from the excavation.

- 4. The earth and sand shall be extracted to at least a minimum depth of 6 feet below the normal water table, as determined by the Wichita-Sedgwick County Health Department.
- 5. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no more steep than five horizontal to one vertical.
- 6. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
- 7. All of the area included within the fenced sand extraction operation shall be graded in accordance with a plan submitted to, and approved by, the Sedgwick County Bureau of Public Works.
- 8. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel, prior to the commencement of any sand extraction operation, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
- 9. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the county Zoning Resolution and amendments thereto.
- 10. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses which will permit the establishment of sod cover to help prevent erosion.
- 11. To minimize blowing soil in this area, overburden shall not be removed more than six months in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion.
- 12. The storage of equipment or stockpiling of sand is not permitted closer than 100 feet to any public right-of-way or closer than 50 feet to any property line.
- 13. Nothing in the approval of this request shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the sand extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand, sand pumping and related equipment shall be removed from the subject site.
- 14. The approval of the Conditional Use is for a period not to exceed five years from the date of approval by the MAPC and/or the Board of County Commissioners and subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises. As part of the required operational plan, the applicant shall divide the site into 2 distinct areas for the purpose of showing phased excavation over time. The plan would show which area was to be excavated and at what time.
- 15. Hours of operation for the sand extracting business shall be limited to 6:00 a.m. to sunset.
- 16. All on-site water and sewerage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.
- 17. Any water wells needed to operate the facility must comply with the Water Well Construction Standards contained in Article 30 of the Kansas Department of health and Environment rules and regulations.
- 18. The applicant shall make the site available to the Wichita-Sedgwick County Health Department for the installation and management of groundwater monitoring wells.
- 19. Any on-site storage of fuels or chemical must be approved by the Wichita Sedgwick County Health Department.

20. Drainage plan needs to be submitted and approved by the Bureau of Public Works prior to starting the sand and gravel extraction. All of the area included within the fenced sand extraction operation shall be graded in accordance with a plan submitted to, and approved by, the Sedgwick County Bureau of Public Works.
21. The applicant shall be responsible for maintaining all operational roads in a sand or graveled condition and shall apply water or other acceptable dust retardant to as to minimize blowing dust.
22. Any violation of conditions attached shall declare the conditional use permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is zoned "RR" Rural Residential, which accommodates very large lot, single-family residential development in areas where a full range municipal facilities and services are not available. All of the property surrounding the site is zoned "RR" Rural Residential and is used for agriculture with farm-related single family residences. The Cowskin Creek and the Kansas Turnpike are located west of the property.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently used for agriculture and this use could continue given the exclusively agricultural character of the area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized by the various setback requirements and operational restrictions required as conditions of approval.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Agriculture" (20 acre minimum lot size), which accommodates agricultural operations as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural uses. In the "Agriculture" category, subdivision into multiple lots less than 20 acres, as proposed in the redevelopment plan, generally should be developed through cluster provisions that reserve land for agricultural uses or open space, which is proposed by the applicant with 11 single family lots on 60.3 acre site with a 40.2 acre lake reserved for open space.
5. Impact of the proposed development on community facilities: The development of this property as a sand and gravel extraction operation should not have a significant impact on community facilities. This operation does not generate significant traffic. On-site water and sewer services will be required to serve this site due to its remote location.

KNEBEL "Staff is recommending approval for this with the standard conditions, except for No. 3. The standard condition is that there would be a fence surrounding the entire site. Staff is recommending that there just be a fence in the areas where there is not a hedge row, which would serve as a barrier to entry and would also serve as a buffer to neighboring properties.

It is not reflected in the staff report, but we do support what the applicant had requested and just failed to put it in the staff report. Item No. 14 says that the Conditional Use will be for a period of 5 years. The applicant had requested 7 years, and I just failed to make that change in the standard conditions, but we do support the 7 years they requested. I am available for questions."

GAROFALO "We have the hours of operation, what about days of operation?"

KNEBEL "We aren't recommending anything different than the standard. It would just be the seven days a week 6:00 a.m. to sunset."

MCKAY "Marvin, on this one, and this may not be the proper place to say this, but on the type of groundwater underneath, remember when we did that study?"

KROUT "Yes."

MCKAY "This is in that area and I don't see anything mentioned to that in the comments. Is this the time to do that or at platting?"

KNEBEL "The background section mentions that it is in the area where there is groundwater expected to be within 10 feet of the surface, in the third paragraph of the background section."

KROUT "Usually, what we do is to make sure that the bottom of the pit is--that there is going to be water."

KNEBEL "Yes, that is noted on the site plan."

MCKAY "No. 4 doesn't say anything about that. If you are talking about just sand extraction, that is one thing. You said you were going to plat the ground."

KROUT "Platting is not a requirement. This is just a development of plans to show that they will be subject to use of the property. When they come in to plat, then we will deal with the groundwater."

MCKAY "All right. Thank you."

GAROFALO "Are there any other questions? If not, we will hear from the applicant."

GARY WILEY "Mr. Chair, Commissioners, I am here on behalf of the applicant. The applicants are Kenny and Jason Cain. They currently operate the Aggregate Sand and Gravel in the 500 block on east 63rd Street South. They will be there for another 5 years, I think, before they are pumped out at that location. Jason bought this 80 acres a couple of years ago or so, and is desirous of turning the north 60 into a sand and gravel operation.

They have been doing this for over 20 years, or at least Kenny has. They are not new at the game, and with the proposed change to Item No. 14, changing the time from 5 to 7 years, we are in complete agreement with all 22 conditions of approval."

Osborne-Howes left the meeting at 4:10 p.m.

GAROFALO "Are there any questions of Gary?"

WILEY "Mr. Cain is here if you have any specific questions that I can't answer."

MICHAELIS "Gary, will you explain to me what that No. 4 actually means?"

WILEY "No. 4, the sand would be extracted at least a minimum of 6 foot below groundwater. Groundwater out there today is about 7 to 8 feet, and we are having to guarantee that we will pump it at least 6 feet below the existing groundwater."

MICHAELIS "But you could go further?"

WILEY "We could go further. We will probably go 40 to 60 feet, something like that. We have to go a minimum of that. The Health Department requires that."

GAROFALO "Are there any other questions? Is there anyone else to speak in support of this application? Is there anyone to speak in opposition?"

FORREST BUTTS "I am from the Mulvane area. I own the farm directly behind this and my sons own the farm directly on the north. I am not against sandpits at all. In fact, for 20 years, I had a sandpit on my property. I still own it. Twelve years ago they moved out, pumped it out, but it was in an area where the sandpit should be. There were no houses around there, it was in the 100-year flood plain and you couldn't build houses on it, and the next thing was that the water underneath it was not over appropriated. That is what I am going to go into here.

I am a farmer and I irrigate. We have five wells within a quarter of a mile of this sandpit. We have one well that is 20 feet from where this sandpit is going to be. The Division of Water Resources controls the water in Kansas. Our water below us belongs to the State of Kansas, and the Division of Water Resources controls it. I got all of this information, and I am going to bring it to you, from the Division of Water Resources. They are very alarmed about this sandpit going in this area.

In Salem Township, that is where this is going to be, the potential net evaporation is 20 inches per year. That is just evaporation from this sandpit. You divide that by 12 inches and it leaves 1.66 feet. He proposes a 40.2 acre sandpit. That is 67-acre feet and that is a lot of water. Now, I am going to read to you a sentence here. Gail Baughman owned this farm before he died; he died and his widow sold this farm to this person here. In 1993, he asked for 60-acre feet to irrigate and they rejected him. I am going to tell you why. On February 9, 1993, this is part of a letter to Mr. Baughman: 'On February 9, 1993, a letter was mailed to you that stated that 2,522 acre feet of water was already appropriated--remember that figure--in the immediate area, surrounding your proposed well. It was also stated that the calculated safe yield was 2,059-acre feet. Since your proposed appropriation would cause increased stress upon the aquifer, which already exceeded safe yield, you were notified that your referenced application was recommended for denial'. I have letters here where they denied his application. That was for 60-acre feet and this guy is going to use 67-acre feet in an area that is already over appropriated. We have a well within 20 feet of it, and I also have a well that is a quarter of a mile from it.

In a dry year, we had one well that pumped so low that we had to add another well and put them together to pump water out of it. This is our livelihood, folks. I have been farming all of my life. My grandfather homesteaded in this area in 1870, and it is tough right now anyhow, and to take this, it is going to affect our irrigation wells.

I feel sorry for the people who live next to it. There is noise from this operation. These big diesel engines really make a lot of noise and here they are going to pump it from 6:00 o'clock in the morning until dusk. I hope you will deny this application. He knows all about this. All of the sand people around here know that the Division of Water Resources is going to make them go into an area that is not over appropriated. They haven't got it through the House of Representatives yet, but they are in committee meetings right now, and if he gets this approved and gets started, they are going to turn him down later on because that is what is happening with the sand plant people. I talked to a sand plant operator last week and this person told me that they all know about this situation with the Division of Water Resources. But we have wells right around it. I am just talking about five wells within a quarter of a mile. I also own some other wells that are within half a mile. It is our livelihood folks, and I just ask that you deny this. Thank you. I have all of this material from the Division of Water Resources if you would like to keep them on record."

GAROFALO "Okay, thank you. Sir, where did you say your farm is? Adjacent to this?"

FORREST BUTTS "Yes, I own this farm here (indicating); and my sons own this farm here."

STEVE BUTTS (Indicating) "We have a well here, a well here and we also have a well right here on this quarter over here. And then we have an irrigation well right there. Our headquarters are right here, half a mile away."

FORREST BUTTS (Indicating) "We have a well right here, too."

STEVE BUTTS "Yeah."

GAROFALO "Are there any questions of the speakers? Okay. Is there anyone else to speak in opposition?"

JIMMY WALLIS "I live at 10713 South Hydraulic, which is approximately half a mile north of 111th Street, which puts me just about 400 or 500 feet north of this property here. I have only three concerns. One obviously is noise and traffic. There is a sandpit north of 79th Street and the traffic up and down Hydraulic is tremendous from it. Morning traffic to and from Boeing, Cessna and everything else, and the evening traffic, and throw in a bunch of trucks, and it is tremendous. It is ruining Hydraulic.

The other thing is blowing sand. Now, Kansas has a predominately southerly wind, southerly breeze, and with the sand piles 400 feet south of me, I am afraid I will be inundated with sand along with my neighbor south of me. Then my other concern is my well. I have a shallow well and that is our water system, as is for most of the people around there. I am worried about the quality and the quantity. If they lower the water level, my well goes dry. If they pollute that water with diesel fuel or what have you, I am afraid my water will be affected. Thank you."

GAROFALO "Any questions of the speaker? Than you, sir."

WARREN "Will you point out on the map where you are?"

WALLIS (Indicating) "I am right here."

GAROFALO "Thank you. Is there anyone else to speak in opposition?"

BRYSON BUTTS "I am a pastor here in Wichita. My wife and I live about half a mile east of this proposed sandpit. One of the reasons we moved out to the country, and we have been here now listening to you talk about the noise levels in the City, and it is fascinating. That is precisely why we moved out of the City. We are thankful to be out where it is quiet and I was just reading through here and one of the things I noticed was that you mentioned that seven days per week from 6:00 a.m. to dusk, and what that says to me is that there is a lot of time there where I would appreciate a quiet atmosphere to live in. That is one of the reasons why we live out in the country. It has already been spoken that this is a loud operation with sandpits being around.

Also I mentioned as well, just as my predecessor said, the increase of traffic is something to think about, with sand trucks going by our home. That is not something we would look forward to on a regular basis. These roads are already wash-boarded and we would really be opposed to having the amount of traffic that is going to increase. And then, as has already been spoken, as well, just the over appropriation of water is something that we are concerned about as well. So, we are opposed to this sandpit being placed in our neighborhood. Thank you."

MCKAY "Where do you live?"

BRYSON BUTTS "I live half a mile east, (indicating) right down there. Here is 111th Street, and we live in this area, right in here."

MCKAY "How much land do you live on, sir?"

BRYSON BUTTS "Approximately an acre to an acre and a half."

MCKAY "Okay, thank you."

GAROFALO "Is there anyone else to speak in opposition?"

Lopez left the meeting at 4:20 p.m.

STEVE BUTTS "I live at 2411 East 111th Street. Bryson lives right across the road from me. We also irrigate that quarter section. My brother Curt and I operate the farming operation. We are fourth generation farmers. Our livelihood is irrigation. Commodity prices today, after expenses, you can hardly pay the taxes with dry land farming. Just shut the water off of your lawn during July, August and September and see how much grass you harvest.

My Dad started irrigating in the early 50s and we have had to get water rights on every well that we pump. We keep logs and we turn in water use on every well we have. I don't see how anyone can allow someone to come in and not do the same regulations that we have to abide by. He is going to use more water than they would to irrigate that place, and that farm was

denied water usage because of over appropriation. I just want to reiterate what my father said, that we are there for the long haul. After he mines that sand, puts houses in there, they are going to leave. I have a son that farms, he is the fifth generation. We want to stay there and we want to take care of our underground water. I hope you people can realize where we stand and that groceries don't grow in the grocery store. We farmers may get kicked around a little, but we try to stay after it.

My final thought is that there is no replenishing of the water of that farm. It is flat. I have been on the Township for 11 years, and former Commissioner Hentzen, I have taken a scolding or two from him at the annual meeting. Water drains down 111th and it runs to the creek. There is no drainage to run back into this to replenish the aquifer. The only thing that will replenish it will be rain, and his calculations have rain already calculated into the evaporation of this pond. So I just plead with you people to help us support our livelihood. It is tough enough as it is. If you have any questions, I would be willing to answer any of them."

HENTZEN "Did I hear you say that the sand pit would use more water than say, what you fellows are pumping?"

STEE BUTTS "Right. The man wanted to irrigate that 80 acres and he applied for 60-acre feet, which would have allowed him to irrigate that. A 40-acre pond will evaporate more in a normal year, that's a normal year, not a dry year or hot year, it will evaporate 67-acre feet of water. Those statistics are from the State. The State regulates everything we do. They own the water under the ground. We have complied and I don't see why he shouldn't have to comply just like we do. I am no hydrologist and I don't know if anyone here is, but they denied that to pump 1-acre foot, not the 60-acre foot, but 1. The whole area, they take a two mile area, and the thing about an irrigation well, you get a number and the first guy to get a number, if you start losing water, they shut the other guys with the higher numbers off until they get down to you. But when he has a 40-acre pond there, how are you going to go shut the switch off on that evaporation? Is he going to fill that back up with sand?"

His number will proceed all of ours. They will shut your well down, and if you operate it, it is a \$10,000 fine per day. He is not going to fill that sandpit back up with sand if our water starts to deplete down there. It is not feasible. "

MICHAELIS "How much ground do you farm?"

STEVE BUTTS "In that area, I would say 1200 acres, probably."

MICHAELIS "And for water appropriation, what is it in there?"

STEVE BUTTS "It is different from farm to farm. We have pivots, and some of that is gravity flow, gravity irrigation with beds. Most generally, they will only allocate you 18 inches of acre-foot of water per year. So most of it is allocated that way. We have meters on our pumps so when we start them, the meter runs, and at the end of the year, you are required by law to report, or you get a fine if you don't report your usage. You can get it taken away or you can get fined for not reporting it."

MICHAELIS "I guess what I am trying to get at is would your usage in a year be more or less accordingly to what this evaporation would be?"

STEVE BUTTS "Well, it would be less. When they asked to irrigate that farm, they asked for 60-acre feet of water to irrigate that farm, and they were denied that. He is going to use more than that. You can irrigate with less in a wet year, or more in a dry year. If the application would have been appropriated, he could have irrigated that with 60-acre feet. But like my Dad said, they take a two-mile area, the whole area already has 2,600-acre feet appropriated. The amount they would like is 2,000-acre feet, so it is already 600-acre feet over appropriated. So if you add more to it, somebody is going to end up high and dry. It is not going to be that sand pit because you can't stop evaporation. You can't shut his well off."

GAROFALO "I have a question of your Dad. The letter that you presented to us from the State, is that in response to communication you sent to them?"

FORREST BUTTS "No. All I did was to call on the phone to get that first letter that tells about the evaporation in Salem Township. It shows the whole entire state. The net evaporation in Salem Township is 20 inches. Now, all of the other letters were what the water resources sent to Gail Baughman, the prior owner of this property right here that they are asking to put the sand pit on. All of those letters are made to him back in 1993."

WARREN "Mr. Butts, has there ever been irrigation on this particular 80 acres?"

FORREST BUTTS "Not on the 80 that they are putting the sand pit on."

WARREN "Never got a permit?"

FORREST BUTTS "No, sir. They denied it. That was the letter, it was a denial letter. They were denied. There is also a letter I received day before yesterday and they said back in 1993 they took a different light on sandpits than they do today. They are absolutely against this sandpit going in this area. He needs to move into an area where it is not over appropriated. I have nothing against him if he wants to go into an area that is not over appropriated."

GAROFALO "Okay. Thank you. Any other questions? Have we heard from everyone who wanted to speak in opposition? No one else. Okay, then the agent has two minutes for rebuttal."

WILEY "I will be brief. We know that we have to go to the Division of Water Resources and get a permit for this sand plant at this location. If they turn us down, they turn us down. We can't pump. But we have to get approvals here before we can go on to the Division of Water Resources and ask for this permit.

They are talking about the lack of water in this location. I live 1-1/2 miles north of here on 95th Street South. I have a little pond in front of my house. It is 7 foot to water. Everybody else is complaining about the high groundwater in this area, and I don't see how this pit is really going to effect it that much. This is that whole area of Derby, Haysville high groundwater table that has been a real problem for the last 6 years or so. This site is located about a mile and a quarter from the Turnpike entrance at 119th Street South. It has great access; Hydraulic is a two-lane blacktop in real good condition, all the way up. I travel it quite often. Like I said, I live on 95th Street just to the west of Hydraulic.

The actual storage of sand in the plant site, if you will look on your site plan, is right in the middle of the site. You can see the drive proposed access to the site. All of the pumping, the sand storage and everything will be approximately 1,000 feet from the north property line. We have some 2,000 feet of frontage along Hydraulic, and we are proposing the sand plant site and the access at about midway, about 1,000 feet. So we are 1,400 feet away from Mr. Wallis' property with wherever the access and the sand storage is going to be. I will be happy to answer any questions that you have."

WARREN "Gary, now the permit that you are talking about has a requirement for you to begin operation. Is that from the same board that they are talking about?"

WILEY "It is. It is from the State Division of Water Resources."

WARREN "And they are one in the same?"

WILEY "Yes, one in the same."

WARREN "And the criteria for this type of operation that takes into consideration their type of operation, too?"

WILEY "Evaporation is all that they will consider. And the recharge, due to the rain."

KROUT "Procedurally, Gary, you are saying the State Division of Water Resources will not issue a permit or even review this before you get the zoning approval?"

WILEY "Sure."

HENTZEN "But we aren't rezoning, are we?"

WILEY "No, you aren't rezoning. It is a Conditional Use to allow this particular use."

KROUT "But until you get approval of the Conditional Use they won't issue a permit?"

WILEY "They want to see that. They prefer to see that, yes."

KROUT "They prefer to, or..."

WILEY "I have never had it going in advance of. We have always gotten the governmental agency's approval, which they like to see first."

HENTZEN "Marvin, have we had one like this?"

KROUT "Where farmers were concerned about water appropriations?"

HENTZEN "Yeah. Have we had one of these?"

KROUT "No, they haven't been in here with concerns."

WILEY "Well, we have Mr. Dealy that is always concerned, but..."

KROUT "Well, right, but not adjacent property owners. And frankly, I am uncomfortable about going forward with this case. All of our recommendations are always based on the information we received prior to the published hearing and this is new information, and you still do have objectives that deal with preserving agricultural land in your Comprehensive Plan. We are not talking about property that is along the K-96 corridor and northwest that we know is going to develop. This is going to be farmland for a long, long time, we know that.

I guess, Gary, I am not comfortable, and maybe even if Water Resources was not to review the permit first, it seems to me that maybe we ought to have someone from Water Resources come down and educate the Planning Commission about this issue before they even take a vote on it. I think it is premature and we have made a recommendation based on information now, but this is enough new information for us to tell you that we are not comfortable."

WILEY "We would not be adverse to a deferral as long as things can proceed within a reasonable time."

WARREN "Marvin, what are you asking for?"

KROUT "Two weeks or four weeks so we can invite someone from the Department of Water Resources to review the situation and to come give you some advice, not to review, necessarily and to approve or disapprove the application formally, but to give you some idea about this issue."

WILEY "And like the gentlemen have said, there is a sand pit about three miles from here off of the big river at Mulvane that is associated material. I don't know whether that was Mr. Butts' original plant or not. There is one at 79th Street, three miles north of here."

KROUT "Those are north, and are in areas that are.."

WILEY "No, one is south and one is north. We are right in the middle."

KROUT "Well, I think it is a good idea to lower groundwater and has more to do with where there is more development and more suburban development and people are more concerned about flooding than it is on farmland where people are more concerned about conserving water. I just think that the Planning Commission needs to have some more information on this before you make a decision."

STEVE BUTTS (From the audience) Can I ask a question? Were you aware that this area was over appropriated?"

WILEY "No."

BARFIELD "Sir, I noticed that the previous denial was based on the conditions that existed at that time, February 1993. As far as you are concerned, what has changed in terms of conditions?"

WILEY "We are not farming this land, Mr. Barfield. I think the denial was to the people that were prior owners of this piece of property and I can't answer that. I did not know that. That is what I just explained. I have done a lot of sand pits and we have always been successful in getting the Division of Water Resources permits for the sand plants."

MICHAELIS "I have two questions. I am a little uncomfortable in a couple of aspects. I would like to direct a question to the owner there. Let's say hypothetically, because what I am kind of leaning toward now is to defer this until we can get some more information, but I want to ask a question first. If we get information that supports the fact that there is enough groundwater there and by putting in this sand pit, it wouldn't effect it, based on today's information. Would you have a problem with it then?"

FORREST BUTTS "Well, I already know that it is over appropriated."

MICHAELIS "I know, but I am saying that if, based on new information that we get, if we find out that there is plenty of water there."

FORREST BUTTS "Oh, yeah, if it is not over appropriated, then that is fine. But if it is over appropriated, then we don't want it in there."

MICHAELIS "I understand."

GAROFALO "Are there any other questions of Gary?"

MOTION: That the item be deferred for four weeks to the February 24 meeting.

MICHAELIS moved, **MARNELL** seconded the motion.

WARREN "We also need to have staff get someone from Water Resources down here."

MICHAELIS "Yes, that is fine."

WARREN "These matters are fine, because it often what we want or what we feel about these things. We are dealing with land use here. We have to deal with that. If we have grounds for denying it, okay, but if we are just denying it because we just don't like it, we probably are going to get taken to court and reversed."

GAROFALO "Is there any other discussion? Okay, we have a motion to defer this for at least four weeks until staff gets more information for us regarding this water business."

VOTE ON THE MOTION: The motion carried with 11 votes in favor. There was no opposition.

FORREST BUTTS "I would like to ask one thing. Could you notify us when this is going to take place so we can be here?"

KNEBEL "Yes. We have put you on the notification list."

FORREST BUTTS "Well, my sons own the property north and they weren't even notified before."

GAROFALO "Did you all sign on the sign-up sheet?"

KNEBEL "Yes, they did."

GAROFALO "Okay, then you should be notified."

FORREST BUTTS "Thank you very much."

9a. Case No. Z-3349 – Albert H. Gibson and C.C. Lawson, applicant; Don Folger, (agent) request zone change from "NR" Neighborhood Retail to "LC" Limited Commercial; and

9b. Case No. CU-551 – Albert H. Gibson and C.C. Lawson, applicant; Don Folger, (agent) request Conditional Use to permit a car wash on property described as:

Odd Lots 1-11 inclusive, Block P and Lots 43, 45 and 47, lying south of Orient Boulevard, except the west 10 feet for street and half vacated Dora Street on south, south University Place Addition, Wichita, Sedgwick County, Kansas. Generally located east of Meridian and south of Orient Boulevard.

DALE MILLER, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting a Conditional Use permit to allow a car wash to be located within 200 feet of residential zoning. The applicant is also seeking a zone change from "NR", Neighborhood Retail to "LC", Limited Commercial. A car wash is first permitted in the "LC" district with a Conditional Use. The application area is a one-acre platted tract of land located at the southeast corner of Meridian and Orient.

The attached site plan shows a seven-bay car wash. All seven of the car wash bays are depicted as self-service. These wash bays are located approximately 48 feet west of the east property line. The plan also depicts four vacuums located east of the wash bays, on the eastern property line. Fourteen parking spaces are also shown along the east property line. These parking spaces are to be used for drying or vacuuming. The facility would have one access to Orient, located 120 feet east of the intersection of Orient and Meridian; and one to Meridian, located 60 feet south of the intersection of Orient and Meridian.

The site plan indicates that the southern most 125 feet of the application area will not be used by the car wash. No use has been identified for this vacant strip at this point in time. The applicant had to buy the whole parcel and the code requires the 60-foot separation distance from residential zoning used for permitted uses. Single-family homes are located south and southeast of the applicant's ownership. To the east is located an Eagles Lodge, a baseball diamond and vacant land. Railroad tracks are located north of the site.

Key Unified Zoning Code car wash "supplementary use requirements" include: buildings to be located at least 35 feet from arterials and 20 feet from other street right-of-way; 60 from the lot line of any residentially zoned lot, unless the property is being used for a nonresidential use permitted by-right in the underlying district; fencing, a minimum of six feet in height shall be provided along the interior side and rear property line, when adjacent to a dwelling; all area utilized for washing or drying, including ingress and egress, shall be paved; lighting shall comply with lighting standards in the code; no string-type lighting shall be permitted and signage as per the sign code.

Compatibility setbacks are required along side and rear lot lines adjacent to property zoned TF-3 or more restrictive. The minimum setback is 15 feet plus one foot for each five feet of lot width over 50 feet, up to a maximum of 25 feet.

Landscaping will be required per the "landscape ordinance".

The project complies with compatibility setback and supplemental requirements. A screening fence will have to be built along the perimeter where the "LC" zoning is adjacent to residential zoning, part of the east and the south property lines; and landscaping will have to be provided.

CASE HISTORY: In January 1999 this site was approved for "NR", Neighborhood Retail zoning, subject to re-platting within one year. To-date the site has not been re-platted.

ADJACENT ZONING AND LAND USE:

NORTH:	"MF-29", Multi-family Residential; Orient Blvd. and railroad right-of-way
SOUTH:	" MF-29", Multi-family Residential; single-family residential
EAST:	"TF-3", Two-family Residential, and "LC", Limited Commercial; Eagles Lodge, ball diamond, vacant and single-family homes
WEST:	"LI", Limited Industrial; feed and seed warehouse, warehousing and manufacturing

PUBLIC SERVICES: The site has frontage to Meridian, a four-lane arterial and Orient Blvd., a local two-lane street. Meridian has traffic volumes of 17,000, while Orient has volumes of 1,300 cars per day. The 2030 Transportation Plan estimates the volume for Meridian will increase to 19,000. 2030 projections are not available for Orient. Municipal services are available to serve this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide identifies this area as appropriate for high density residential uses. This designation has not been changed since the zone case that rezoned the property to "NR". This category includes densities in excess of 10 units per acre, such as garden apartments, condominiums and special residential accommodations for the elderly. The commercial locational guidelines recommend that residential uses should be buffered from commercial uses.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The site shall be developed and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code.
2. The applicant shall submit a landscape plan for approval by the Planning Director, prior to issuance of a building permit, that meets the ordinance's requirements.
3. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
4. Any violation of the conditions of approval shall declare the Conditional Use permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding land is zoned for a wide variety of uses – Limited Industrial, Limited Commercial, Two-family and Multi-family. There are industrial and warehouse uses, a fraternal organization, ball diamond, vacant land and single-family residential uses surrounding the site. This area is a mixed-use area.
2. The suitability of the subject property for the uses to which it has been restricted. The site is approved for "NR", Neighborhood Retail. This district permits very low intensity office and retail uses. The site could be developed with such uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized due to the various setbacks, screening, fencing and landscaping requirements.
4. Length of time the property has remained vacant as zoned. The property is currently vacant as zoned.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use Guide identifies this area as appropriate for high density residential uses, however this is an outdated designation due to the 1999 zone change which approved this site for "NR" uses. The Plan recommends that auto-related uses should be confined to area where similar uses already exist. However, car washes have traditionally been located along collector streets, and this site is, for the most part, adjacent to more intensive uses and zoning.
6. Impact of the proposed development on community facilities: The car wash use should not generate more traffic than that which would have been generated with the "NR" zoning. Other community facilities should not be adversely impacted.

MCKAY "I need to declare a conflict of interest. The architect is my nephew who offices in my office, so I will step down from the bench."

MILLER "This particular car wash you heard some time ago. It went to the City Council and was sent back. Essentially what you approved, if you don't remember last time, was the approval of 'LC' zoning for the northern portion of this and approval of a Conditional Use for a car wash. The remaining 125 southern feet of the application area were left 'MF-29'. It had been approved for Neighborhood Retail. There was a platting time limit on that. Your most recent recommendation was to approve this for the car wash. There were protests turned in on this that were equal to 23% of the area that was notified. With that I would answer any questions."

HENTZEN "Were the protests turned in when we heard the case before or after we heard it?"

MILLER "They have up to 14 days after the hearing to turn those in."

BARFIELD "On what basis did the City Council send this back to us?"

MILLER "I am not sure, other than the protests. There were 23 per cent protests was the main thing. Marvin was there and he may know better."

MICHAELIS "And they couldn't get the super majority vote?"

KROUT "It would have required and still will require, unless there are withdrawals, 6 out of 7 votes, but there was only one person, I think, who came to protest at the Planning Commission meeting, so you didn't have the benefit of knowing that there were more protests, No. 1, and I guess No. 2 is that they were aware that this other application had been filed and they thought you might want to take that into consideration as you are looking at this case. And I think that was probably it."

GAROFALO "I have a question. The 'NR' Neighborhood Retail zoning is still pending?"

MILLER "Well, technically, their platting date expired, but we have never actually taken that away from anybody with a pending action going on, so if it turned out that they wanted to pursue that, I think they could still follow up on that, and get an extension."

GAROFALO "Otherwise, it reverts back to.."

MILLER "'MF-29'."

WARREN "Those conditions that you set out are the same as what we had before?"

MILLER "Yes."

GAROFALO "We didn't make any changes the last time like moving the vacs or anything like that?"

MILLER "No, we didn't make any changes."

MICHAELIS "I am trying to refresh my memory. Wasn't there some discussion about moving across the street to a lot that was similar that was already zoned? Was that part of the discussion?"

MILLER "No, there was another application that we were aware of, and you may want to hear both of them."

KROUT "You may want to hear that case before you vote on this."

MILLER "Yeah. The other application is on the west side and further south."

GAROFALO "And this is the one where we were limiting the Conditional Use, we were not allowing the southern 100 feet?"

MILLER "One hundred twenty-five feet. You can see here on the site plan that this is the southern property line. The residences are to the south here and then from here north is 125 feet. That was the part that you did not include in the rezone, yes."

WHEELER "I guess I don't understand. If we are supposed to look at these on a case-by-case basis, what is the purpose of reviewing the other case in conjunction with this?"

MILLER "I think it is really up to you, but I guess if there is some idea that as we heard at the last meeting, that you can have too many car washes in a given vicinity, I suppose it would be possible for you to weigh these two cases in your mind and decide that one is better than the other, and that you wouldn't want two this close together."

WARREN "That is second-guessing the market."

MILLER "I am not saying that is what you want to do, we just want to make sure that you know the second one is coming along."

KROUT "In fact you had the other one two weeks ago and you deferred it until today. You already did have a public hearing and you can open it up for any additional comments, and maybe it would be helpful to refresh yourselves on that case and where it is. Do you remember you did have a couple across the street who were opposed to it? It was on the west side of Meridian and about a block down."

WARREN "I think we ought to take these one at a time. And on a land-use basis, rather than a market basis."

MILLER "Don is reminding me that what you approved was the south 100 feet, not the south 125 feet; that the car wash is 125 feet away from the southern property line, but that you approved 'LC' down to this line, leaving 100 feet here with the NR; and 'MF-29'."

WARREN "That may come back as a Neighborhood Retail?"

MILLER "It could if they plat it, yes."

JOHNSON "I guess I would kind of like to review what we have done on both cases because we didn't make a decision on one of them because we were going to bring it back because we knew the other one was coming back. I think you are right in what you are saying, but if that is what we were going to do, why didn't we act on the one before?"

WARREN "I think that is a good question."

JOHNSON "We didn't, and the reason we didn't is that we were going to hear the other one."

GAROFALO "But we did defer it, so now we can get both of them at the same time."

HENTZEN "It says that we voted 11-1 to approve the above captioned request?"

MILLER "Yes."

HENTZEN "In other words, we voted on it."

KROUT "Yes, but there were additional protest petitions and because of that, that is one of the reason that the City Council sent it back and we sent new notices out, and there may be someone who wants to speak to this issue who didn't speak before. So you may have some new information today that you didn't have at your previous hearing."

BARFIELD "We already do. Didn't you say there was 23% protest petitions?"

MILLER "Twenty-three per cent. Four protestors."

JOHNSON "I guess we have heard both cases, and have made a recommendation on one. We didn't on the other one, because we knew that the first one we approved was coming back. So I guess I am curious as to what new information is there on both cases, and then I think we need to vote on them individually."

GAROFALO "Oh, yeah. Okay, let's hear from the applicant on this case."

DON FOLGER "I am the agent for the applicant. As was said, the vote was 11-1 last time. The only changes were that we offered the 100-foot 'NR' for the south end of the property, and in addition to that, we have made a change that is a coordination between myself and the developer of the property. These vacuums as shown right here, (indicating) which would be on the east side should be put over here, in between here and right along there. We will change that a little bit. That is a miscommunication between myself and the developer. So in this case, we are moving them farther away. I believe the protestors are this lot here (indicating). Some of them are over here that face the next street back, and I do believe one of them was the Elks Lodge, which is right up here in this triangle piece right up in here.

So, we have moved the vacuums, and on car washes, that seems to be the big issue. We have taken those as far as we can. This rendering that I brought here is the standard product that this developer is using for his car washes. It is very residential use with wood shakes. I have a picture of it also that I can pass around for you. That particular picture, and I had that here last time, but I didn't pass it around. It is at Woodlawn and Mt. Vernon. So, we feel that this particular use of land is very well suited for a car wash. With me here today is the developer and he would like to speak. The real estate agent is here and he would like to speak, representing the owner of the land. He couldn't be here, due to the weather.

The only other thing I have to say in terms of technicalities is what you guys all discussed, and that is we are talking about land use here and not competition across the street. I think that it is important that we address each one of them separately, and is this piece of land good for the use of a car wash, and then let the two of them determine the marketability of the land. Are there any questions for me?"

WARREN "As I recall, wasn't there a ball field to the east?"

FOLGER "Yes, there is. The Elks Lodge is right here, and there is a ball field that goes down through here. The first resident is clear down in here somewhere (indicating)."

JOHNSON "I am curious. Since we had seen your case earlier and you stacked the cars behind the car wash so you could have the vacuums behind it. That was an issue. I see where in this plan they are stacked in front. Why the difference in the two plans?"

FOLGER "On that other plan that was heard earlier today, there is a ruling in the Zoning Ordinance that you have to be 60 feet away from residential property. On that one we couldn't stack them and get out the other side. You have to be able to stack so many cars, plus be a distance away. It also has to do with marketability of the developers. We are talking about two different developers here."

BARFIELD "Sir, have you met with any of the people who were close to this, and have you tried to work out any of their concerns?"

FOLGER "I am going to let the developer and the real estate agent talk about that."

GAROFALO "All right, they have 7 minutes left of their time."

SAM WOODBURN "I am with the Weigand Real Estate Company. We have had this on the market since September 17, 1998. This is the only proposal we have had on this property. It is an odd configuration of property and it is in an unusual area. I think, in my opinion, from my few years on the street, that this is probably about the best use that you are going to get out of that property, and I think they will probably be lucky to get it."

GAROFALO "Thank you. Are there any questions of Sam?"

MARNELL "I have a question. Would you compare for us, as a real estate agent, this building to the Elks building, aesthetically?"

WOODBURN "Quite frankly, I have not even gone over and looked at the Elks building. I know where it is, but I haven't tried to compare it with this. This being a new structure with new material, I would think that it would probably be a better looking facility at this point as far as a car wash or as far as the Elks go."

CHARLIE LAWSON "I am the developer, as it has been called to this point. In reference to the question that you just asked, the Elks building is a converted stone structure of some manner with a stucco exterior on it. Not that we are better than them, but in terms of the current condition of that facility, that was a consideration in terms of putting this here. This is a standard bookend, footprint, or whatever you want to call it, of what I do.

This property has set vacant, I think 15 years. I like to think that I see eye-to-eye with Marvin. Before I trump myself up here so candidly, I look at what staff recommends on it. My initial proposal to Marvin was all 'LC', which Marvin turned down. I came back to him with this proposal here and it had enough merit to it that Marvin approved it. Prior to the time that we took it any farther than this, and I think this is a key issue here, I contacted the neighbor to the south and on the same side of the street that would be adjacent to the 100 foot buffer that we said we would leave, and went through with him, basically the idea in mind. In the two conversations that I had with him, he found that to be an approvable scenario and part of that was that the 100 foot that was a buffer, he had intentions of using it for a private garage to his dwelling that is directly south. The way that was left was upon the approval of the property being rezoned. Whatever the appraisal for that particular parcel was, he was welcome to buy it for that figure, and he could own it from that point on.

From there, the Commission, and I think the one thing I want to reiterate here is that I don't go backwards on deals. It was brought up to the Commission that I threw that out as a bone to him to get him to lay down so to speak and not object. Through his attorney, it was made light that I didn't contact him as far as what a value would be for that piece of property. In fairness to the people that are involved with myself, we couldn't put a value on it until the project was approved, so that was basically left on hold.

I don't know if you say things like this at this Commission or not, I have listened to a couple of these gentleman here that I really admire. I don't mean that as smoke whether you approve me or you don't. When this went to the City Council and was sent back, I had never seen that occur before, so I took it upon myself and took the liberty to call Bill Gale. He is identified as being the City Council member for that particular area of town. After about 15 minutes of conversation, I just put it to him bluntly and asked him what was the ploy? What was the tactic of what was happening here? And in a short, sweet summation of that, Bob Knight was not at that meeting and in the fact that one person had dissented on this, it would take a 6-0 vote for it to be approved, is the way I think those numbers work. Bill Gale thought that a lady that is in the northwest part of town, Ms. Cole, would possibly be a dissenting vote. He didn't want to see the project lost to that area over one vote, so his best option, as he told me was to send it back to you gentleman. From that, as far as anything that I can answer for you, I would be more than delighted to. It is frustrating for me in terms of listening to this, because it seems like we are dealt with as a puppet. Maybe that is the way it has to work, but my life is not as important as those old boys with the water problem. So whatever."

GAROFALO "Thank you. Is there anyone else to speak in support of this application? Is there anyone to speak in opposition?"

DAVID HOLMES "I am an attorney here in town. I spoke in opposition to this before. I represent four different individuals in this area. The last time I was up here, I informed you that I represented one. I represent Marie Bosley, who is the adjacent landowner and owns ten lots, constituting three houses immediately south of the proposed property. I also represent Nadine Leitzel, who is widow, who I believe owns this property (indicating). I also represent Sonny Valle, who lives down here just a block south or so. He is not part of the protest area. I also represent the first property south of the protest area, the Nabalms. They are outside of the 200 foot zone, so I guess if you want to boil it down to the 200 foot radius, I represent two landowners within that, as their attorney.

I represent two other landowners that have somewhat of an interest in what is going to happen on the north end of their neighborhood. I share Mr. Lawson's frustration. It seems to me, and it is no smirching comment against staff, that the rules operating before this Commission and operating before the staff seem to be somewhat unpublished and unknown. I was advised, when I met with Dale a month and a half ago, that I need not bother to go to a Citizen's Participation Organization meeting because their meeting was after this Commission's meeting, and would be irrelevant. Then as I met with Councilmember Gale in January, he told me that the CPO was consulted on December 26, or whenever their meeting was, and no one appeared in opposition. That was very critical to him.

Well, I'm sorry, but it would have been nice to know that even if the CPO was going to meet after this Commission, they would be listened to by the City Council. I was told up here last December that this parcel of property was an 'MF-29', subject to rezoning by December 31, 1999. If it was not done, an extension had to be granted. Then Mr. Miller stands up here and says 'that is really not the way it works. If there was something else pending, we would probably give it to them even though they were supposed to file it before hand. I am a little frustrated when I am told by Mr. Lawson that his client is making deals with my client when my client tells me that he doesn't want that 100-foot.

What I will tell you is that it has been represented by staff here that protests were filed for 23 per cent. I have in my possession and I will deliver to staff right now, protests that I think cover 54% of the property. Ms. Bosley, when she submitted her proposal, covered three of her ten lots, yet the City Council and staff knew that she was a 10-lot owner. They failed to include her bottom seven lots. Now, I will grant that on her protest that it was only as far as three lots. That was probably my fault, but I have a revised, perfected protest as far as her ten lots and three homes.

The Eagles Lodge is protesting. Staff knows that the Eagles Lodge owns two parcels of property. That north of this street and down through the ball diamond. The Eagles Lodge protested and they only counted the north part because that is all that was on the protest. I now have a perfected protest that is going to include all the way down the south. Q-Tech is protested here, all four properties south, my client's three properties and the one adjacent to it have protested. I have a protest from Mrs. Leitzel and a protest from property owners on this side of the street that own property over here by the name of Crow. We have what we believe are 54% of the adjoining landowners within the protest area, protesting this.

Our objections to this reconsideration, and I would like to speak about the City Council very briefly. The big protest was, if you recall, a car wash was going to go in at 13th and St. Paul. That was defeated by the City Council on a 7-0 vote. That was the principal reason, as I understand, Commissioner Gale was afraid that Joan Cole was going to vote against this, based on that recommendation. I understand that we are stanza two of a three stanza song this afternoon on the car washes. We believe that this car wash is inconsistent with the residential neighborhood on the east side of Meridian. There is commercial property, there is industrial property on the west side. While we are talking about marketplace conditions, I think Mr. Lawson needs to go out and buy property that is already properly zoned, pay the price for it and not come in and back door a low price lot that is zoned multi-family and try to get it rezoned so that he can have a better economic advantage. That is all I will say because I am out of time, although I am not out of ideas. Thank you."

KROUT "You spoke at both the previous hearing and this hearing and indicated all of the people who were in opposition today and I guess represented the one property before that, and I heard you talk about how it is inconsistent on the east side. But normally when neighbors are protesting, they are protesting because they think there is a detrimental effect on their property or their property values as a result of the rezoning. As we looked at it, we didn't think, in this particular situation that that was the case, and that is why we recommended approval. I still haven't heard yet, in either of these hearings, why the Elks Lodge, or why the owner to the south or these owners to the east really feel that this is going to be a detrimental impact. I think the Planning Commission can waive neighborhood opposition, depending on strong the wave, based on why people are opposed to it. I guess I am offering you the opportunity to tell us what the problem is here. We haven't heard it yet."

HOLMES "I beg to differ. I will agree that you haven't heard it today, but I believe last month when I was up here I gave you five points of opposition. First, we believe that a car wash is going to increase the amount of trash and related debris coming off of the property. As people clean out their cars and vacuum them, there is a certain amount of airborne materials that escape the car wash facility and we think are going to come into the neighborhood and come into the neighborhood and into the adjacent lots.

Now we understand that there has to be a fence as part of the zoning requirement, but that is only on those adjacent areas to currently residential use property. That would be a fence to the south and a fence along 75 feet of this back corner. There is no requirement from the 75-foot point up to the front end or on either of the other sides to have events that would prevent debris from blowing. Secondly, we indicated that noise was a problem. We indicated that we believe the vacuums along the back line as proposed, and I understand now that they are going to be moved to the front line and to the north edge, but we believe that those vacuums, the stereos, the general problems associated with operating a car wash are going to interfere with the people that live (indicating) here, here, here and here.

Thirdly, we indicated that we were afraid that there would be an increase in vandalism and destructive action by individuals congregating upon the property as in common by a car wash, regardless of how aesthetically pleasing it might be. Fourthly, we indicated that the lighting of having a 24-hour business would interfere with the pleasure and use of the residential properties in this corridor, and finally; fifth, and I believe that this is a new one, in talking to the owner of Valley Feed and Seed since our last meeting, he indicates to me that Meridian has quite a drainage problem at this intersection and he is of the opinion that putting another concrete area where it is currently grassland or yard area is going to increase the run-off and increase the drainage problem there. I will concede that that is a new argument, a new issue that I have not spoken about before. The first four I believe I reviewed the last time I was here, Sir. That was in opposition to this as well."

KROUT "Thanks for repeating those."

HOLMES "I basically wanted to avoid doing that because you have already heard them once."

KROUT "It might have been good to refresh our memory."

GAROFALO "Are there any other questions? Okay, thank you sir. Is there anyone else here to speak in opposition? Seeing none, the applicant has two minutes for rebuttal."

LAWSON "Don and I just sat there and said 1,2,3,4,5. Who takes what? Drainage, last on the list is Don Folger. In order for that facility to be developed, City staff, in terms of when you get the building permit, controls that, based on how the water has to flow. Trash, noise, vandalism, lighting. Gentlemen, ladies, I make my living at this business. I think as I stand here, 88 bays strung around Kansas is what we take care of. We take a lot of pride in what we do. I am not going to knock Sonny Bosley or any of the other neighbors around there. I invite any of you to look at any one of my facilities on a given day and I will tell you that they are as well kept, if not better kept than a lot of the residential areas are in that immediate vicinity.

I don't know how these things start up, but car washes carry a stigma that they are not deserving of. I sat here and listened to the one earlier. I think it is something that needs to be addressed in terms of taking some relief off of Marvin. I don't say that to back pat Marvin. It is scary for me to sit here and say my living is I am an original equipment manufacturer of car washes and I develop them from the ground up, of thinking of the different things that lawyers come up with, that you as Commissioners come up with that myself and the gentlemen over here along the door live with day in and day out that are so far from being part of what is reality. Car washes don't have that coming. Fair enough."

GAROFALO "Are there any questions? Okay. We've got it back here to the Commission."

BARFIELD "Marvin, you mentioned earlier that it would take 6 of 7 votes of the City Council to approve this?"

KROUT "Unless some of those protests are withdrawn, anything over 20% means that it will take 6 votes of the City Council to override the protests."

WARREN "That is just on a Conditional Use?"

KROUT "A Conditional Use and any zoning case."

BARFIELD "I am of the opinion, when I look at when this was before us previously, and the vote was 11-1; if the City Council sent it back to us with that kind of vote, these 23% must have made some type of an impression on them. I don't see how we are going to improve on an 11-1 vote. As a matter of fact, we are not, because there are only 10 people here."

MARNELL "I have to say I haven't seen anything that makes me change how I feel about this. I drove by this location today and looked at it; looked at the adjacent properties and the adjacent uses, and I think the planned facility, and again, I realize that we are zoning land, but with the Conditional Use permit, we are doing a specific use. That proposal is going to improve that neighborhood and I am going to vote for it and support it."

KROUT "Would you put the zoning slide back up? I didn't see it on the site plan, but there is a requirement on the Zoning Code to screen along the playing field there where it is adjacent to duplex zoning. That will be a requirement of the Code, even though it doesn't appear on the site plan. So there will be screening along that east side. I just thought I needed to make that clear."

GAROFALO "Before we have a motion or anything, do we want to hear the other case first?"

BARFIELD "We do have two pieces of information that we did not have before and those two pieces of information is about the 23% of the petitions and also the information that there is another car wash in this vicinity. I might have been the one vote against this before, and if it comes to that, I will be the one vote against it this time."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Surrounding land is zoned for a wide variety of uses – Limited Industrial, Limited Commercial, Two-family and Multi-family. There are industrial and warehouse uses, a fraternal organization, ball diamond, vacant land and single-family residential uses surrounding the site. This area is a mixed-use area. The suitability of the subject property for the uses to which it has been restricted. The site is approved for "NR", Neighborhood Retail. This district permits very low intensity office and retail uses. The site could be developed with such uses. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized due to the various setbacks, screening, fencing and landscaping requirements. Length of time the property has remained vacant as zoned. The property is currently vacant as zoned. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use Guide identifies this area as appropriate for high density residential uses, however this is an outdated designation due to the 1999 zone change which approved this site for "NR" uses. The Plan recommends that auto-related uses should be confined to area where similar uses already exist. However, car washes have traditionally been located along collector streets, and this site is, for the most part, adjacent to more intensive uses and zoning. Impact of the proposed development on community facilities: The car wash use should not generate more traffic than that which would have been generated with the "NR" zoning. Other community facilities should not be adversely impacted.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The site shall be developed and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code.
2. The applicant shall submit a landscape plan for approval by the Planning Director, prior to issuance of a building permit, that meets the ordinance's requirements.
3. The applicant shall dedicate access control as shown on the site plan, and provide dedication of additional right-of-way and/or easements (by separate instrument) as may be required by the City Engineer, prior to the issuance of a

building permit.

4. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
4. Any violation of the conditions of approval shall declare the Conditional use permit null and void.

MARNELL moved, **WHEELER** seconded the motion, and it carried with 8 votes in favor, and 2 in opposition (Platt and Barfield). McKay abstained. Carraher, Osborne-Howes and Lopez were not present.

JOHNSON "Marvin, since the vote is different this time, somebody had to vote in favor of this before and not this time."

PLATT "I changed my vote."

JOHNSON "Does he need to give a reason?"

KROUT "Well, it might be helpful for the Council to make a final decision."

PLATT "I changed my vote, because as I announced earlier today, I am going to generally oppose Conditional Use permits for car washes within 200 feet of a residential zoning district if neighbors turn out in opposition."

BARFIELD "My vote was the same. I opposed it the last time."

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10. **Case No. CU-558** – Paradox Investment II, LLC c/o Cuy Mauck, applicant requests a Conditional use to allow a car wash within 200 feet of a residential zoning district, described as:

Commencing at the Southeast corner of Lot 10, Block 1 of said Southwest Industrial Addition, said point being on the West Right of Way line of South Meridian Avenue as now established; thence North 01 degrees 33'05" East along the East line of said Lot 10 and said West right-of-way line, a distance of 50.50 feet, to the point of beginning; thence leaving said East line and said West line North 88 degrees 14'09" West, a distance of 250 feet; thence North 01 degrees 33'05" East, a distance of 200 feet; thence South 88 degrees 14'09" East, a distance of 250 feet to a point on the East line of Lot 11, block 1 of said Addition and said West right-of-way; line; thence South 01 degrees 33'05" West along said East line of Lot 11 and Lot 10 and said west right-of-way line, a distance of 200 feet to the point of beginning. Generally located west of Meridian and north of Rita.

SCOTT KNEBEL, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: This case was deferred from the January 13, 2000 meeting of the MAPC to allow review of this Conditional Use concurrently with a requested zone change and Conditional Use for a car wash for property located several blocks to the north on the east side of Meridian.

The applicant is requesting a Conditional Use to allow a car wash to be located within 200 feet of a residential zoning district. The application area is a 1.1 acre platted tract located west of Meridian and north of Rita. The site is currently zoned "LI" Limited Industrial.

The attached site plan shows an eight-bay car wash. These wash bays are located approximately 150 feet west of the east property line. The site plan also depicts five vacuums located west of the wash bays, with five parking spaces to be used for drying or vacuuming, and four vacuums located east of the wash bays, with fourteen parking spaces to be used for drying or vacuuming. The facility would have one access to Meridian and two accesses to an existing private drive on the south. A joint access to vacant property on the north would also be provided. A landscaped buffer is depicted along all property lines.

Property to the east of the site is zoned "SF-6" Single Family Residential and is developed with single family residences. Property to the south is zoned "LI" Limited Industrial and is developed with a grocery store with vacant out parcels available for additional development. Property to the north and west is zoned "LI" Limited Industrial and is developed with various offices, warehouses, and manufacturing businesses with vacant land available for additional development.

Key Unified Zoning Code car wash "supplementary use requirements" include: buildings to be located at least 35 feet from arterials and 20 feet from other street right-of-way; 60 from the lot line of any residentially zoned lot, unless the property is being used for a nonresidential use permitted by-right in the underlying district; fencing, a minimum of six feet in height shall be provided along the interior side and rear property line, when adjacent to a dwelling; all area utilized for washing or drying, including ingress and egress, shall be paved; lighting shall comply with lighting standards in the code; no string-type lighting shall be permitted and signage as per the sign code. Landscaping also will be required per the "landscape ordinance". As depicted in the attached site plan, the project complies with these requirements.

CASE HISTORY: The site is in the Southwest Industrial Addition, which was platted August 8, 1953. The lot proposed for the Conditional Use was created by a Lot split approved August 23, 1996. The owners of the lot also dedicated a sanitary sewer

easement and access control along Meridian, which were accepted September 24, 1996. At that time, the site was proposed for development as an auto parts store.

ADJACENT ZONING AND LAND USE:

NORTH: "LI"	Office, General; Manufacturing, General; Warehousing
SOUTH: "LI"	Retail, General
EAST: "SF-6"	Single Family
WEST: "LI"	Office, General; Manufacturing, General; Warehousing

PUBLIC SERVICES: The site has frontage to Meridian, a four-lane arterial. Meridian has traffic volumes of 16,400 vehicles per day. The 2030 Transportation Plan estimates the volume for Meridian will increase to 18,400 vehicles per day. Municipal services are available to serve this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Industrial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites, such as car washes, should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The site shall be developed and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code.
2. No dryers shall be associated with automatic wash bays.
3. The applicant shall submit a landscape plan for approval by the Planning Director, prior to issuance of a building permit, that meets the ordinance's requirements.
4. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
5. Any violation of the conditions of approval shall declare the Conditional Use permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property to the north, south, and west of the site is zoned for industrial development, with existing and developing industrial and commercial uses surrounding the site on these three sides. Property to the east of the site is zoned for and developed with single-family residential uses.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned "LI" Limited Industrial which accommodates moderate intensity manufacturing, industrial, commercial, and complementary land uses, including car washes with a Conditional Use if located within 200 feet of a residential zoning district. This site could be developed with such uses.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized due to the various setbacks, screening, and landscaping requirements.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Industrial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites, such as car washes, should be located adjacent to arterials. This site has frontage to Meridian, a four-lane arterial. The Commercial Locational Guidelines also recommend that commercial sites should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The various setbacks, screening, and landscaping requirements for car washes should minimize any adverse impacts on surrounding residential areas.
5. Impact of the proposed development on community facilities: The car wash use should not generate more traffic than that which would be generated by other uses permitted in the "LI" district. Other community facilities should not be adversely impacted.

KNEBEL "This is the car wash that was mentioned previously, which is further to the south and on the west side of Meridian. It was heard at the last Planning Commission meeting on January 13 and was deferred to today's meeting. At the discretion of the Planning Commission, I can go over the staff report if there needs to be a refresher. If not, I will stand for questions."

GAROFALO "Do we want a review of the case? Apparently not."

KNEBEL "I do have one thing to mention, and I did pass this around before the meeting. The applicant did submit a minor revision to the site plan. It is an 11 x 17 sheet. The primary difference is the staggering of the car wash bays. If you will look at your staff report and compare the two, the staggering is more of an arrow where the northernmost is in the middle, rather

than on the northern end. It also moves the equipment room from towards the north of the wash bays to the center of the wash bays."

GAROFALO "And the vacuums are where, to the west?"

KNEBEL "The vacuums are in the same locations, both east and west of the car wash bays."

WARNER "Where is the nearest residential, just across the street?"

KNEBEL "Right, to the east across Meridian."

GAROFALO "Are there a number of homes? Last time there was one that protested, I guess."

KNEBEL "There is the aerial that shows you the number of homes to the east."

WARREN "Let's see that again."

KNEBEL "Okay."

HENTZEN "Have any protests been filed?"

KNEBEL "No. There is a photograph of the homes north and east and then south and east."

HENTZEN "Scott, I believe the zoning on the last one was 'NR'. Why would we zone one 'NR' and the other one 'LI'."

KNEBEL "You are talking about the previous case that we just talked about?"

HENTZEN "Oh, this one is already 'LI'."

KNEBEL "Yes, it is."

HENTZEN "Okay."

GAROFALO "Are there any other questions? Okay, we will hear from the applicant."

CUY MAUCK "I will only take a minute or two. We talked about this at length two weeks ago. The car wash itself is a commercial property. By building it on the Limited Industrial, we thought it was the right site, the right area. We bought the land and we are planning on sitting on it for another two or three months until the other one came up for a Conditional Use and we thought we had better mirror their movements."

We are working with Builder's, Inc., on this facility. That is part of the reason for the change. We think this is a little more aesthetically pleasing, and it moves the closest end of the car wash 10 feet back from the road. We are roughly 190 foot off of the road, so there is no problem with car stacks. We have four drawn in, and I guarantee you that we can get a six in there if we need to, so nothing will be backing up in the road. We are about 300 feet to the nearest house. I don't know how we can get any further than that.

It will be a well-lighted facility, mainly around the car wash itself. We will keep the lights on Meridian to a minimum so we don't have any neighborhood concerns. Aside from that, I will throw it open."

GAROFALO "The vacuums here, are they right there alongside Meridian?"

MAUCK "They are about 30 foot off of Meridian. There is a grass area there. There are two school of thoughts with vacuums. Put them to the back, let people use them. I have 14 year old daughter who is going to be driving soon, and if she gets off work at 10 o'clock and decides to wash her car and vacuum it, do I want her at the back of the property, or do I want her at the front of the property where she can be seen. Hopefully, it is a better location to be seen."

BARFIELD "Sir, what are your hours of operation supposed to be here?"

MAUCK "It will be 24 hours a day. That is the only way you can make one of these work feasibly. There is a lot of money up front in them."

GAROFALO "Are there any other questions? Thank you. Is there anyone else here to speak in support of this application? Is there anyone here to speak in opposition to this application? Seeing none, we will bring it back to the Commission."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood): Property to the north, south, and west of the site is zoned for industrial development, with existing and developing industrial and commercial uses surrounding the site on these three sides. Property to the east of the site is zoned for and developed with single-family residential uses. The suitability of the subject property for the uses to which it

has been restricted: The site is zoned "LI" Limited Industrial which accommodates moderate intensity manufacturing, industrial, commercial, and complementary land uses, including car washes with a Conditional Use if located within 200 feet of a residential zoning district. This site could be developed with such uses. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized due to the various setbacks, screening, and landscaping requirements. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Industrial" uses. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites, such as car washes, should be located adjacent to arterials. This site has frontage to Meridian, a four-lane arterial. The Commercial Locational Guidelines also recommend that commercial sites should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The various setbacks, screening, and landscaping requirements for car washes should minimize any adverse impacts on surrounding residential areas. Impact of the proposed development on community facilities: The car wash use should not generate more traffic than that which would be generated by other uses permitted in the "LI" district. Other community facilities should not be adversely impacted.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The site shall be developed and maintained in compliance with all the requirements of Section III-D.6.f of the Unified Zoning Code.
2. No dryers shall be associated with automatic wash bays.
3. The applicant shall submit a landscape plan for approval by the Planning Director, prior to issuance of a building permit, that meets the ordinance's requirements.
4. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
5. Any violation of the conditions of approval shall declare the Conditional Use permit null and void.

WARREN moved.

MILLER "Frank, wait just a second, we are trying to get a clarification on whether or not we will have a problem with folks that weren't here last time voting this time."

WARREN "Mr. Chair, while they are getting that information, there is nothing I can read or study, or in any way perceive that certainly we have to be very considerate of people coming before this board. We should listen to them, and sometimes they are going to point out things to us that we otherwise wouldn't know. But the whole concept of land use and the individual rights to land is not subject to personal or public opinion. We couldn't possibly get to any court in the land and say we did this because somebody didn't like it. There has to be better grounds than that for denying a guy his Constitutional rights of economic use of his land. This whole idea that land use and getting approval is subject to popular vote is just out of this world. It is not anything we can back up."

BARFIELD "But at the same time, we do have a responsibility to make sure that an applicant that comes before us doesn't trample the rights of other individuals. I am sure that you wouldn't want to see an 18 wheeler parked in somebody's circle drive in front of their home in a residential area."

WARREN "There are laws governing nuisances, and I think that is what you are talking about. But you have to establish a nuisance and there are a lot of court cases on this as a criteria."

PLATT "I would remind my fellow Commissioners that the Supreme Court of the State of Kansas has approved the opinion of neighbors as a legitimate basis for making a decision by Planning Commissions in a zoning case."

WARREN "I want to see that rule."

JOHNSON "I want to ask Marvin a question. Here is a lot, if I figured right, is a 50,000 square foot lot. It is Light Industrial, which can have all kinds of things, probably some operations that would be a whole lot noisier than vacuum cleaner. Semi trucks can park in it. They can park on the street. There is nothing anybody could do since it is Light Industrial."

Marvin, if this lot was cut in half and a lot split was done on it, I calculated that if this wasn't 300 feet from a residence, this wouldn't even be in front of us."

KROUT "Are you talking about the back part of the lot, but not the front?"

JOHNSON "Right."

KNEBEL "Car washes are required to be on arterial streets, or at least to have ingress/egress from an arterial."

KROUT "Because there are at least a couple of people here for the initial hearing, my question for the Law Department was whether or not it would be appropriate for you to vote on the case this afternoon. His suggestion was that we try to summarize, at the previous hearing, where the protestors were and what they had to say, and maybe Scott can do that for us briefly. If any Planning Commissioners want to add or subtract to that, they can."

Then, based on that, if the Commissioners feel comfortable, you can vote. If you feel uncomfortable because you weren't here for the previous meeting, then you can abstain."

WARNER "Was the result of the last meeting a deferment, or was there a decision made?"

KROUT "It was a deferral."

GAROFALO "We did have a public hearing."

KROUT "There were protestors and I think we need to make sure that you at least know who they were and where they were and what the nature of their protest was."

GAROFALO "Who all wasn't here last time? Three."

MARNELL "I was here the last time, and I was the dissenting vote on deferring this. The reason it was deferred had nothing to do with the protests, it had to do with the City Council. Again, I stand by my vote against the deferral, but we deferred it, and that is why you lose some votes. But the reasons given by the folks when they proposed the deferral had to do with the City Council, it didn't have to do with the protests."

KROUT "I understand that, but for the people who were not here, we need to have some information about the nature of what occurred at the hearing, and there were protests, and they have not had an impact on you, but they might have an impact on some of the people who were not there two weeks ago."

JOHNSON "I guess I want to tell what I remember about the meeting. I believe there was one woman from across the street who was concerned about a drive being across from her Mother's house. I don't think she even lived there."

KNEBEL "She didn't. She came and read a letter that her parents had written because they were unable to come."

JOHNSON "Yes, they were unable to come. She was concerned about the headlights hitting in their front window. Also, we knew that we had already approved one down the street and it was sent to the City Council. I think that was mentioned, staff brought it to our attention. Yes, we did, but that was coming back to us because they wanted to review the whole thing, so it was deferred on that basis. It wasn't deferred on 50 or 60 protesting people in here that I remember. I remember the one lady."

WHEELER "I have a question. Didn't we talk about them aligning the drive-way so that that would accommodate the objection?"

KNEBEL "No, the driveway is existing today. It is a shared driveway for the entire development. It is where the car is parked there in that slide. It serves property to the south and property to the west."

WARREN "I want to reiterate what Commissioner Johnson has said here. First, look how long this land has set vacant. Secondly, look what could go on it as 'LI'. This is a pretty good case for that."

GAROFALO "Okay, let's hear from Scott."

KNEBEL "The speaker at the last hearing read a letter, and I will read it to you again so that everyone can benefit from the comment from the public."

This is from a property owner immediately across the street to the east. It says 'I am opposed to a car wash being located on the northwest corner of Meridian and Rita streets in Wichita, Kansas. We have enough noise from existing traffic as it is; also additional traffic from a car wash will make it even harder to get on Meridian from Rita Street. In cold weather, water on the street will freeze and cars won't be able to stop, so it will be unsafe.'

Then there is the trash issue, which will be blown across the street to collect in our yard'. This is from Gerald Born at 2427 Rita."

GAROFALO "Are there any questions? Okay, we will bring it back to the Commission then."

BARFIELD seconded the motion.

BARFIELD "To show that I am not indifferent to car washes, this is what I like to see in a car wash. This is located at an intersection where I think it has less interference and less opposition from residents, based on the fact that there was only one in opposition here before, and I will be in support of this."

VOTE ON THE MOTION: The motion carried with 11 votes in favor. There was no opposition.

11. **Case No. A 99-31** – Unilateral annexation by the City of Wichita of properties south of 55th Street South, from west of Seneca to east of Hillside.

GAROFALO "Does anybody have any questions on this item?"

SCOTT KNEBEL, Planning staff "There is a slide here if anybody is curious as to where it is."

MOTION: That Planning Commission recommends that the annexation ordinance for republication be approved.

GAROFALO moved, **WARNER** seconded the motion, and it carried unanimously (11-0).

12. **Other matters**

KROUT "I don't think anyone wants to stick around for a long discussion on the Comprehensive Plan, but I think we need to schedule a meeting. My suggestion would be after the Subdivision Committee meeting next Thursday. That would be a logical time to do that. I can't tell you yet whether it will be 2:30, 3:00 or 3:30, but it would be something like that."

MCKAY "Dale, how many items are there on Subdivision next week?"

MILLER "Four or five, I think."

KROUT "We have that one at 47th and Greenwich which is going to be pretty complicated."

MCKAY "Make it at 2:30 then."

GAROFALO "Let's make it for 2:30 and give them an hour, at least."

KROUT "We will send you a notice."

WHEELER "What is going to be the point of agenda? I am very interested in how we deal with the

KROUT "Yes, you may want to spend a few minutes on how you are going to go about doing that. I have the transcript from the first hearing for you today, and also everything that we have received in writing, comments and updates. We do have comments from a number of people, so be sure to take a copy of that as you leave this afternoon. We will have the other transcripts for you as soon as they are available. It may not be until sometime this week. Maybe we will bring those to the meeting Thursday if we don't get them before.

There is a lot going on. I should just tell you that the County Commission, a week from Monday, has tentatively scheduled a workshop where they want to discuss some of the issues. A couple of them have attended meetings, and they have been hearing and receiving information from the public, and there are some issues that they want to talk about. A couple of them have been more involved than some of the others, so they want to see if there is a consensus among that board about some issues, before they come and sit back with you and have a workshop meeting.

We had talked about a workshop with the County Commission and the City Council. It is probably not going to be until after this February 7 meeting. I still think you ought to meet next week, but the County Commission wants to meet and the City Council may want to have a workshop. There are additional comments that we have received, and we are continuing to receive some now that this issue is receiving a lot of attention, including some comments from the City Manager, some comments from our Finance Director, some comments, although we asked for their comments back in the summer, from the Art and Design Board.

Also, if you remember, we told you that after the July workshop, the City Manager created this Task Force on incentives, and because of that, the Planning staff kind of backed off and helped that Task Force. The Planning Commission didn't spend a lot of time dealing with details of incentives. I think one of the unfair criticisms of the Planning Commission at the hearings-- and there may have been some justified criticisms--but one of the unfair criticisms was that there isn't enough detail about incentives. Maybe we should have or could have responded to them, but there is this Task Force that is working on this parallel effort, and the idea was for these things to be dovetailed together. I think partly because of this, the City Manager--who was there at the last hearing, by the way, for a couple of hours, I understand--and also some City Council members are very interested in getting this Incentives Task Force report--on which a couple of you participated--out to the public, so that it can compliment this discussion of the Comprehensive Plan and maybe even become a part of it, I am not sure.

So, tentatively, the City Council may receive that report by next week, and plan a workshop, so they can provide to the Planning Commission and to the public, some more details about what we think we can do to improve the incentives package for older areas of the City. So there is a lot going on. I think it would be useful for you to have a meeting and discuss what you heard and what it means to you.

The other thing we are trying to do is to find out from the federal agencies what they will accept in terms of our status. The requirement of the Federal law is that we have a Transportation Plan that is updated every five years, and officially that was supposed to be at the end of December. It was December of 1994 when the Transportation Plan was last improved, so we are living on a little bit of borrowed time already. I think that they will be flexible. They are also more interested in what the Planning Commission says than what the governing bodies say, because you are officially the Metropolitan Planning Organization (MPO), so the plan for them is what you approve.

We may come back and talk to you next week about adopting a Transportation element, maybe with some changes, because City Engineering also is looking at it and now suggesting some more changes too. We may ask that you, as an interim, adopt a transportation element to satisfy the federal requirements, with the recognition that you are going to come back and look at it in more detail and there may be further changes ahead. We will be able to tell you more about this next week. So, there is just a lot brewing, but I think it will be worthwhile to start talking about what you heard in the hearings."

BARFIELD "I would like to comment on an editorial by Randy Brown last week, I think, that the Planning Department was not even in favor of the proposal."

KROUT "That is accurate."

WHEELER "I guess I am curious, Marvin, you know, we had a lot of people raise the issue of supporting the conservation plan. The current draft plan goes farther in terms of neighborhood in my opinion, at least. In terms of neighborhood incentives, revitalization, although we added, we mapped a whole bunch of things. Why are they under the impression that the Conservation Plan went farther in terms of incentives? A lot of them came before us and indicated that there were no incentives, just by their comments. And I guess I understand that we, as Commissioners, were forbidden to have any discussion or comment to them, so I guess why staff didn't inform them that there is a task force at work. We did have an Agricultural Task Force or something at work. Why was that not appropriate?"

KROUT "Do you mean at the hearing?"

WHEELER "Yes."

KROUT "In retrospect, it might have been helpful to explain a couple of things in response, but I think the difficulty was that once we started opening it up, then I think every Planning Commissioner maybe would want to get involved in getting their own personal comments about this thing and that thing, and the purpose was to hear from the public.

Now, if you are asking me personally, I think you have gutted everything about agriculture, you have crossed out everything we have suggested about some more controls in fringe areas, such as more judicious use of special assessments, or some ideas about density, and you went to urban service areas versus urban growth areas. Everything you have done outside of the central area is trends versus conservation oriented. If you are satisfied with that, that is fine. And I think, like I said, I don't think some comments were really justified because both of those scenarios were very general and neither of them got into great detail about incentives. The idea was to pick a scenario and then we will work out the details of that, including transportation. We needed to know where people were living before we could design a transportation plan.

I think that some of what they said wasn't justified because there was this Incentives Task Force that was working on the details and these two efforts were supposed to dovetail. But in other ways--some of you who have attended more of these meetings than others--but it was like water torture over that three or four month period, watching you 'X' out the words here and there. Some of you were more a part of it than others, but the plan that you recommended, I think if you don't understand why some people think that there is a problem with that plan, then I am not sure how much more discussion around the table next week, or in the future, is going to make any difference."

WHEELER "Marvin, I understand their comments completely, but they also were under some impressions or misinformation of exactly what was in the plan, in a number of areas. It was very obvious. Very few of them had a copy of the actual plan. We may have failed in our outlining of defining the draft plan that was handed to them, in some areas.

But we made a decision, or it was my understanding, in the workshop with the City and the County that we took the Ag portion out until they had reviewed it and come back to us with a recommendation. That was the decision in that workshop. And I guess to not inform the public of that is very misleading."

KROUT "To not inform them that we took it out because the County asked us to take it out?"

WHEELER "No, but we asked them to come back to us and the Ag community...we asked the County to come back to us with recommendations."

PLATT "Whoa, that is not the way I remember that at all."

KROUT "That is not exactly the way I remember it either. And I don't think the County wants to take the responsibility for having axed that element. I think you guys did it."

PLATT "The Committee was formed long after we did that."

JOHNSON "I want to be a little bit farther than that, because it is a situation that I think no matter what we have presented to the City and the County, there is going to be some opposition. Now, we had 700 people, or whatever, at the 3 meetings that was opposed to some of the things in the plan, which we are going to have, no matter what. If we would have turned around and wrote it exactly the way everybody in the audience wanted it, and had rehearings, there probably would have been just as many or more people in the audience talking about it, so that we are not going to change."

The problem I have with it, and I know that it is public information what all of our professions are, and I don't care. That is public record and why somebody can say that we have special interests, I don't know what a lot of these new commission members do, and I don't care to know. I could go look it up. When they are saying special interests, I don't know if they mean that there are too many Catholics on this board, or what. But when they start saying that 8 of the 14 of us are a member of the Wichita Homebuilders Association and that isn't factual, I am curious if there is a way to respond to that diplomatically without getting into an argument about it."

WARREN "The thing that I hated more than anything else was that the whole process was based on divisiveness, on dividing. We started out conserving the trend. The problem was that I agreed with about 80% of what those people stood up and said when they talked to us and gave us hell. I agreed with them. We need to go back downtown. We need to do these things. Do we do them at the expense of somebody else?"

The other thing that I was very, very upset about, and I wished that the Chair had done something about it, and that is what you are talking about. They would imply that because I had done some building and some development that that would give me a self-interest that would say that I have no integrity, that I have no honor, and that is offensive to me. As a matter of fact, in my case, the best thing that could happen to me personally, and to my family, would be for the conservative to take effect. Because I think it would have the effect of driving people out into the suburbs, which is where our assets lie. We would do a lot better, personally, with a conservative act. So to imply that I can't vote with integrity, and to imply that I can't vote with a good conscience, that makes me mad."

MICHAELIS "I want to add to that, too, because that really bothered me. I went there with an open mind and really wanted to listen and hear what everybody said, and as soon as somebody got up there and started pointing fingers, saying 'just because you belong to a certain group we can't trust your opinion', I am going to go against what they say whether I want to or not."

I really think that somebody, and I don't know if it was you, or the Chair, or whoever, but that was an uncomfortable situation every time that came up, and somebody should have gotten up and said that that wasn't the point of this. That we were here for a public hearing and all of this is public record. If you want that information, here it is, but that is not what we are here to discuss. We are here to discuss the Comprehensive Plan, not the professions of the people on the Planning Commission. I think that got way out of hand."

BARFIELD "For clarification purposes, when we have multiple public hearings like that, are we obligated to give, if a person wants to attend all three or all five, are we obligated to give them speaking time at every single one of them?"

KROUT "No. If you wanted to not give the time to people to speak the second or third time, you could have done that. But Frank chose to, and he has the discretion as the Chair, and I don't even think we took a vote on it. But he has the discretion as the Chair to give everybody their first opportunity, and then if you are were still ready to stick around, to give people a second or third opportunity to speak."

JOHNSON "Which, in reality, we didn't dare not to do. We would have been crucified in the morning paper if somebody didn't get to speak. Even the one guy that on the last night made such an issue that he had some new information, I didn't hear any new information that he presented to us and he went over his five minutes, and we were trying to cut him back to three."

BARFIELD "My whole thing on that is the fact that you made it public that there would be three meeting nights. Every individual made the decision which night they would attend and which night they would speak. Now if that person attended all three and we heard him on Monday, I don't think we would have the obligation to listen to him on Friday."

KROUT "You didn't have to, but I think you probably would have been criticized if you hadn't."

GAROFALO "And I don't think the Planning Commission has a great image with the public to start out with. And I think if we start cutting people out it will just get worse and worse. I just kind of felt like if they had already spoken, we relegated them to the end of the meeting and if they had something new, and who knows? I felt like we should let them have their hearsay or their say, and spend a few moments there and that was the end of it."

BARFIELD "And I am not being critical. I just asked for clarification purposes."

GAROFALO "In the future, for public hearings like that, maybe we need to discuss the ground rules before we go into it."

BARFIELD "A few people mentioned the fact that we volunteer our time. Myself, in my situation I can't take work there. I listened 3 hours intently, intelligently. I have a family, too that I like to spend time with. If we let these people take up more of our time, they aren't being considerate of our time and they may keep us there until midnight."

MARNELL "I don't think we will get anywhere trying to civilize the general public, so we might as well give up on that one. The question that I have in regard to this, is on the idea of the incentives. I wasn't laboring under the assumption, and maybe I am the one who is wrong, that we could grant incentives, we can set broad policies in a planning document and suggest incentives and recommend those kinds of things, but that takes money when you get to the real incentives. I think that is the political, elected bodies that have the ability to allocate funds, which we don't so we can't set policy."

I kind of felt like we were getting crucified for not having funded the dang incentive programs and that is not us. I don't want to say that staff should be the one to get up to defend the Commission, but it is like one of us has a boneheaded idea. Either I am wrong or they are wrong about this incentive thing. I really don't now who it is."

GAROFALO "I told quite a few people before the meetings and after the meetings that they had been throwing it up about incentives and I told them what was going on. I told them that the manager had a Task Force of staff who was working on it and there was going to be some sort of incentives to try to promote redevelopment in the center city."

KROUT "Let me just respond. Some people were saying that how we grow at the edge and how much money we spend on new infrastructure and development of highways and everything else on the edge has an impact on the budget, because it doesn't leave as much money in a limited budget to be able to use for incentives, so that there is a connection between how we grow and how much money is there available for incentives."

WARNER "Most of those people didn't have a clue how the Water Department as a utility,...they think their tax money is going out there and putting some water lines in these new subdivisions. They think their tax money is putting the sewer lines in these subdivisions, and that is not the case."

KROUT "It is their tax money, it is just coming out of a different pocket. It is coming out of your monthly water fee, but it is still being paid for by taxpayers at large."

WHEELER "No, it's not."

MCKAY "No, it's not."

Everyone spoke here at once.

WARNER "How can you say that?"

MCKAY "It is a utility."

WARNER "How can you say that?"

WHEELER "It's a utility like KG&E, it just happens to be publicly owned."

WARNER "Who pays to put the water lines in in a new subdivision?"

KROUT "The internal lines as opposed to the transmission lines and the mains and the treatment plants and supply?"

WARNER "Yeah."

KROUT "Or are you just talking about the laterals in the subdivision?"

WARNER "No, the main lines."

KROUT "The mains, which are kind of the intermediate lines, are shared between the developer and the rate payers of the utility at large."

MICHAELIS "But the City only pays for it if they want to upgrade it over a certain standard."

MCKAY "Right."

MICHAELIS "The 8 inch standard is paid for by the developer and if the City decides that they want to go to a 12 inch line, then the City pays, but that is their choice."

WHEELER "It is not the City, though, Marvin, it a water utility that happens to be owned by the City of Wichita. But it is not taxpayers."

KROUT "But the customers are all the same people. I mean, it is a little bit different, but it is 90% the same people. And there are certainly other communities that have a different way of paying for the growth-related cost of expanding the utilities."

WHEELER "They are just like a rural water district. Or, if a small city owns a utility."

WARNER "You could do that and run the main line to Valley Center. We are paying for it, taxes are paying for that, and the utility is out there promoting it. They want it. Here, the Planning Department, or whoever it is is saying 'no, that's not right. All of these poor old folks living down here paying for all of this, now, and that is not right.'"

KROUT "Then you need to find a way to write a letter to the editor, maybe, and then if Frank wants to sign it, he can sign it or if someone else wants to sign it, they can sign it--and if Wess Galyon, who didn't have the nerve to get up and speak at any of the three public hearings, wants to send it, then he can send it--but I don't agree with you. So, if you want to make your point, make your point, but make it yourselves."

JOHNSON "Marvin, I just want to ask you one other thing though. The group that was in front of us about the downtown, wanting us to vote here a couple of weeks ago on the churches in the core area..."

WHEELER "C.O.R.E."

JOHNSON "Okay. They were in front of us and we were 'good old boys'. They wanted our vote. The other night at the hearing, they got up and they almost treated us like we hadn't even helped them out. That, to me, is playing games. I felt like those guys were 180 degrees different."

WHEELER "They obviously had been scoped very well outside the realms of the official hearings."

WARREN "I am thinking of a story that a priest told me, when the Catholic Church kind of opened their doors and before that the Protestant Ministerial Association and priests didn't associate too much. All of a sudden, one invited the other one in.

This one priest got up and said I would like to meet with this Ministerial Association under one condition. The first year we will talk only of those things which we can agree on. He said 'after the end of the year, we didn't have hardly have anything to lay out'.

So anyhow, what has started this whole process is how can we work together? We, the building and development, the investment, the C.O.R.E. area. We are working for common things. We started this process being divisive like you are trend and you are conservative, you are a liberal, and you are a conservative. You are a democrat and you are a republican. It was divisive from the beginning, and I hate that because we have so much we can do by pulling together."

MARNELL "I guess I have one comment on this because I was not on the Commission at the time the road show went around with the trends and the conservation, but that was absolutely pitched as the conservative scenario beyond any question. I was out in the general public when I came to that meeting, and I was appalled by it almost as much as the wireless consultant, of how biased it was. So, the general public--and we heard in those hearings-- they think that this Planning Commission put together, not the Planning Department, the Planning Commission put together that conservative scenario and that was the plan. It was put together and taken out to the public and given to them and then for some odd reason, we went crazy and we gutted it. I heard that and I don't know how many other people heard that, but I certainly did, and I thought it was offensive."

WARREN "Commissioner Johnson made a suggestion and I thought it was excellent. Let's develop a plan, hypothetically or however, exactly like those people who were in those meetings would like to have it, and let's present that plan, but let's have three more public hearings."

MCKAY "I am sitting here, and it's obvious that the Planning Department is absolutely against what we have done. I sat in on the Task Force for the Downtown Revitalization and I sat in with the farmers. One of the downtown developers said the City is not going to come up and tell you how much money they are going to give because each individual project stands on its own merits about incentives. If you are talking about getting a building permit, or doing this, that is not going to get it done. The farmers--you talk about special interest groups, now they have been the biggest receivers of government money of any organizations I ever knew, and they are first saying that the developers are now getting all kinds of subsidies and they were schooled by Elizabeth Bishop. I don't care what you say, Marvin, and you know that as well as I do. I can guarantee you that those farmers can't tell the difference between a conservative plan and a trend plan. They separated a few items that somebody has schooled out.

The guy that is the head of Delano Township, about 6 or 8 months ago, they wanted to close University Street at Seneca. He reported that yes, they wanted to do it. The City Council voted to do it, then came to Friends University that afternoon after they had voted, and said 'do you guys have any opposition to it?' We had another meeting of the Delano township and it was completely reversed. That is because whatever his name is is a loose cannon. So there is a special interest group. The farmers are a special interest group. Everybody that was there is a special interest group."

KROUT "Yes, but look around the table. Who is on the Planning Commission? They are not represented."

WARREN "I don't see any special interest group here."

MCKAY "Marvin, I think that we work pretty good together and you are trying to drive a wedge between us. In my opinion."

KROUT "I have tried very hard to not say anything publicly critical of the Planning Commission and I will continue to try to do that. You need to stand up for yourselves, though, because I am not going to defend a lot of the decisions that are being made."

MCKAY "Then quit having your Elizabeth Bishops and your Beth Kings and the other group of people going around and being coaches, coaching all of the different groups."

KROUT "I don't tell them what to do, and I think you are really over-estimating Elizabeth's influence. The impression I got, and I was really impressed with at those hearings was how articulate and educated a lot of the public is becoming about development issues."

JOHNSON "Marvin, I would like to hear what type of problems you have with the Planning Commission."

KROUT "I don't think we have the time."

JOHNSON "It isn't that bad."

HENTZEN "I just want to talk about these water and sewer lines. At Subdivision, they had to include the specials and all of that, but these people that were there the other night saying that the water broke three times on their block and everything else, but I want to tell you that it is all the citizens that are hooked to the water line that paid for fixing that damn thing in front of their house. It was not out of their pocket because it broke on their street."

What I am saying is that people have gotten bad information on costs and I will tell you that they didn't get it from me, and I don't think from any member of this Board. They got it from somebody else at the City of Wichita."

BARFIELD "I think basically, the comments were interpreted as being neglect throughout the entire City."

HENTZEN "I said to somebody that it seems like a pent-up frustration by some of the citizens with the way the City has acted over a number of years. It seems like it was pent-up."

MCKAY "We have 500,000 population and we still have 400,900 and some that still think we are doing okay and we have about 200 that don't."

WARREN "We had 100 people out of 500,000, and I don't know that I made any decisions or changed my decision based on this 100 people."

WARNER "If we hadn't had that one sentence about apartment inspection, we would have had half that many people."

MOTION: That the Metropolitan Area Planning Department adjourn.

GAROFALO moved, **JOHNSON** seconded the motion, and it carried unanimously.

The meeting formally adjourned at 6:00 p.m.

State of Kansas)
Sedgwick County) ss

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2000.

Marvin S. Krout, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)